

**THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION
AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT**

**Tender for the Provision of Service of
Monitoring Work on Fishing Activities to the
Agriculture, Fisheries and Conservation Department**

Tender Ref.: AFCD/MWFA/2020

PART 1 - LODGING OF TENDER

To be acceptable as a Tender, these Tender Documents, properly completed in triplicate and enclosed in a sealed plain envelope marked “Tender for the Provision of Service of Monitoring Work on Fishing Activities to the Agriculture, Fisheries and Conservation Department, Tender Ref. AFCD/MWFA/2020” and addressed to the Chairman, Departmental Tender Committee, Agriculture, Fisheries and Conservation Department, and must be deposited in the Tender Box of Government Logistics Department situated at the Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong on or before the tender closing time at 12:00 noon on 26 November 2020 (Hong Kong Time).

Any late Tender or Tender not submitted in accordance with the submission method stipulated above, e.g., Tender submitted by facsimile or e-mail, will not be considered.

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PART 2 – INTERPRETATION

1. Definitions

In these Tender Documents the following words and expressions shall have the meaning hereby assigned to them except when the context otherwise requires:

“AFCD”	means the Agriculture, Fisheries and Conservation Department of the Government.
“AIS”	means Automatic Identification System.
“Contract”	means the contract made between the Government and the Contractor for the provision of the Services and comprises the Interpretations, Conditions of Contract and Specifications together with all the respective schedules, appendices and annexes to each of the above-mentioned documents.
“Contractor”	means the Tenderer whose Tender for the Contract is accepted by the Government.
“Contract Deposit”	means the sum of deposit referred to in Clause 20.2 of Part 3 – Terms of Tender and Clause 16 of Part 4 – Conditions of Contract.
“Contract Period”	means the period referred to in Clause 1 of Part 4 – Conditions of Contract.
“Essential Requirements”	means the essential requirements set out in Clause 4 of Part 3 – Terms of Tender, and/or a requirement in relation to which it is stated in the Tender Documents that the non-compliance by a Tender or a Tenderer as at the Tender Closing Date will lead to that Tender or Tenderer not being considered further.
“Expiry Date”	means twelve (12) months from the commencement date of 1 January 2021 or the date of the Letter of Conditional Acceptance, whichever is later, subject to the early termination or extension of the Contract as provided in the Contract.

“Fishing”	means the capture or taking of fish, and any attempt to do so.
“Fishing Gear”	means any equipment, apparatus, tool, instrument or device and its accessories utilised in fishing.
“Force Majeure Event”	<p>means</p> <p>(a) any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution affecting Hong Kong, overthrow (whether by external or internal means) of the Government; or</p> <p>(b) any event which is not caused or contributed to by, and is beyond the control of, the Contractor, or any employee or agent or ex-employee or ex-agent of the Contractor and none of them can prevent the consequences of such event from happening;</p> <p>and which, in any case of (a) or (b) above, materially prevents the performance of the duties and obligations of any Party hereunder; for the avoidance of doubt, any change of law and regulation of whichever jurisdiction shall not be treated as a Force Majeure Event;</p>
“Government”	means the Government of Hong Kong.
“Government Cloud Server”	<p>means a cloud server provided by one of the service providers of the Public Cloud Services for the Government Bureaux and Departments which are listed in the web page below:</p> <p>https://www.ogcio.gov.hk/en/our_work/strategies/government/cloud_strategy/supply_public_cloud_for_gov.html</p>
“Government Representative”	means the Director of Agriculture, Fisheries and Conservation acting for and on behalf of Government or any officer authorized by the Director of Agriculture, Fisheries and Conservation to act on his behalf for the purposes of the Contract.
“GPS”	means Global Positioning System.
“Hong Kong”	means the Hong Kong Special Administrative Region of the People's Republic of China.
“Letter of Conditional Acceptance”	means the letter to be sent by the Government giving notice to the successful Tenderer of the Government’s conditional acceptance of its Tender as specified in Clause 20.1 of Part 3 – Terms of Tender.

“Local Registered Fishing Vessel”	means a local fishing vessel with an operating licence issued by MD and also registered under section 14 of the Fisheries Protection Ordinance (Cap. 171).
“Marking Scheme”	means the marking scheme in Appendix to Part 5 - Schedules
“MD”	means the Marine Department of the Government.
“MMSI”	means Maritime Mobile Service Identity.
“Service Period”	means the period referred to in Clause 1 of Part 4 – Conditions of Contract.
“Services”	means to plan and conduct monitoring, collect information/intelligence and assist in conducting enforcement operation and includes all other obligations and duties, ancillary or incidental thereto in accordance with the Specifications and subject to all terms and conditions of the Contract.
“Specifications”	means each and every specification referred in Part 6 – Specifications.
“Technical Proposal”	has the meaning given to it in paragraph 5.7(b) of the Terms of Tender
“Tender”	means a tender submitted by a Tenderer in response to this invitation to tender.
“Tender Closing Date”	means the latest date and time specified in the Lodging of Tender as the latest date and time before which Tenders must be deposited with the Government, as the same may be extended by the Government pursuant to any applicable provision in these Tender Documents.
“Tender Documents”	means the documents as specified in Clause 1 of Part 3 – Terms of Tender and any addenda issued under Clause 3 of Part 3 – Terms of Tender.
“Validity Period”	means the period of time described in Clause 8 of Part 3 – Terms of Tender during which the Tender is to remain valid and open for acceptance by the Government Representative.

2. Singular and plural

Words importing the singular only also include the plural and vice versa where the context requires.

3. Headings

The heading to individual clauses of the Contract is for ease of reference only and shall not in any way vary, limit, extend or affect the interpretation or construction of the Contract.

4. Gender

Words importing one gender (whether masculine, feminine or neuter) shall be taken to include any other gender where the context requires.

5. Reference

- (1) Reference to a person includes an individual, company, corporation, firm or any body or persons, corporate or unincorporated and includes any public body.
- (2) Reference to a day shall be constructed as a calendar day and reference to a working day shall be constructed as any calendar day other than general holidays and Saturdays.
- (3) Reference to a month shall be constructed as a calendar month.
- (4) Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or repealed and substantially re-enacted or made, by any subsequent enactment, order, regulation or instrument.
- (5) Reference to a clause, sub-clause, contract schedule, annex or appendix by number or letter, such reference shall be construed as references to the clause, sub-clause, contract schedule, annex or appendix of that number or letter contained in the relevant part of these Tender Documents.

**Tender for the Provision of Service of
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PART 3 – TERMS OF TENDER

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TERMS OF TENDER

1. Tender Documents

- 1.1 These Tender Documents consist of one complete set of the documents in a bound booklet comprising:

Part 1- Lodging of Tender
Part 2- Interpretation
Part 3- Terms of Tender
Part 4- Conditions of Contract
Part 5- Schedules
Part 6- Specifications
Part 7- Offer to be Bound
Part 8- Memorandum of Acceptance

- 1.2 These Tender Documents are to be bounded by the English version. The Specifications, Price Schedule and Marking Scheme in these Tender Documents are translated into Chinese version for Tenderers' reference only.

2. Invitation to Tender

Tenders are invited for the provision of the Service as more particularly set out in the Specifications subject to and in accordance with the terms and conditions of the Contract.

3. Tender Addenda

The Government reserves the right to clarify, amplify or amend this invitation to tender at any time prior to the Tender Closing Date. Any clarification(s), amplification(s) or amendment(s) hereof will be made by way of an addendum and a notice of such addendum will be posted on the AFCD website at www.afcd.gov.hk. Tenderers are advised to check the said website from time to time for any issue of addendum. Any addendum will also be made available for collection at 5th Floor of the Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Hong Kong. In addition, a copy of the addendum will be sent by post, by fax or by email to each of the Tenderers who has, according to AFCD's record, collected a copy of these Tender Documents at the said address.

4. Essential Requirements

- 4.1 Without prejudice to Clause 4.2 below, all tenders will be evaluated based on both the Technical Proposal and the price.
- 4.2 In addition to Clause 4.1 above, all tenderers must satisfy all the following **essential requirements**:
- (i) Tenderers must submit a Technical Proposal that meets all the requirements as specified in Part 6 – Specifications;

- (ii) Tenderers must be local fishermen or a company formed and registered in Hong Kong by a local fisherman/fishermen;
- (iii) Tenderers must own Local Registered Fishing Vessel(s); and
- (iv) Tenderers must submit a recommendation letter from any local Fisheries Co-operative Society or Fishermen Association.

Failure to satisfy any of the above essential requirements shall render a Tender **disqualified**.

5. Tender Preparation and Submission

- 5.1 A Tender (including particularly Part 7 - Offer to be Bound and Part 5 - Schedules) shall be completed in English and in accordance with other requirements of these Tender Documents. The Government may not consider a Tender that is completed in any other language. If any of its accompanying documents are not in English, a certified translation in writing of the document in English shall be submitted by the Tenderer.
- 5.2 Each Tenderer should read the instructions specified in these Tender Documents before completing the Schedules. If a Tenderer fails to complete and submit Part 5 - Schedules or a duly signed Part 7 - Offer to be Bound, its Tender shall **not** be considered further.
- 5.3 Tenderers must complete the following parts in ink or typescript and provide all the necessary information including documentary evidence which is necessary for tender evaluation in triplicate:
 - (a) the duly signed Part 7 - Offer to be Bound;
 - (b) the duly completed Schedule 1 of Part 5 – Schedules (Price Schedule);
 - (c) the duly completed Schedule 2 of Part 5 – Schedules (Payment Discounts and Contract Deposit Payment Method);
 - (d) the duly completed Schedule 3 of Part 5 – Schedules (Company/Business Organization Details);
 - (e) the duly completed Schedule 4 of Part 5 – Schedules (Statement of Compliance);
 - (f) the duly completed Schedule 5 of Part 5 – Schedules (Non-collusive Tendering Certificate);
 - (g) the information and documentary proofs required in Clause 4.2 of this Part;
 - (h) all information and documents, including a copy of valid business registration certificate or other valid business document issued by a competent authority and a copy of certification of incorporation and certificate of change of name (where applicable) if the Tenderer is a limited company as required in Schedule 3 of Part 5 – Schedules and Clause 10 of

this Part; and

- (i) all other information, not already mentioned above, including technical and descriptive documents to demonstrate that the technical proposal will meet the requirements as specified in Part 6 - Specifications.

The Tenderer should only include price quotation requested in Schedule 1 of Part 5 – Schedules (“Price Schedule”). If a Tenderer has submitted price quotation not in the Price Schedule, the Government reserves the right to disqualify the Tenderer concerned. Even if the Tenderer has not been disqualified, the unsolicited price quotation shall not be attached any weight and shall not form part of the Contract regardless of whether or not they are found in the copies of the Schedules forming part of the Contract (unless such price quotation is accepted by the Government evidenced in writing).

5.4 The Government may not consider a Tender if:

- (a) false, inaccurate or incorrect information is given in the Tender; or
- (b) complete proposals, quotations and information (including descriptive literature, catalogues and any other document required under any provision of these Tender Documents) have not been provided together with the Tender.

5.5 When completing the Tender (including the Offer to be Bound), a Tenderer shall ensure that the name of the Tenderer is the same as the name shown in:

- (a) if the Tenderer is a company incorporated in Hong Kong:
 - (I) the Certificate of Incorporation of the Tenderer; or
 - (II) if there is a change of name of the Tenderer since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Tenderer; or
 - (III) the current business registration certificate.
- (b) if the Tenderer is a sole proprietorship or a partnership, the current business registration certificate of the Tenderer; or
- (c) if the Tenderer is formed, established or incorporated outside Hong Kong, a document equivalent to Clause 5.5(a) or 5.5(b) above (as the case may be) issued by a governmental or competent authority of the place where the Tenderer is formed, established or incorporated.

5.6 “Offer to be Bound” in Part 7 shall be duly signed by:

- (a) if the Tenderer is a sole proprietorship, the Tenderer;
- (b) if the Tenderer is a partnership, a partner of the Tenderer;
- (c) if the Tenderer is a body corporate, one or more persons who are duly

authorized by the Tenderer to execute and submit the Tender for and on behalf of the Tenderer;

- (d) if the Tenderer is an unincorporated joint venture, each of the parties constituting the Tenderer;

A duly signed Offer to be Bound means it is signed in ink and on the original form.

5.7 A two-envelope system (i.e. marking scheme) will be adopted for this invitation to tender. A Tender shall submit the following in two envelopes clearly labelled Envelope A and Envelope B on the outside-

- (a) Document relating to the price information (i.e. the original and triplicate copy of Price Schedule, fully completed, signed, chopped and dated) must be enclosed in a sealed envelope clearly marked **“Envelope A”** and **“Provision of Service of Monitoring Work on Fishing Activities - Price Schedule”** (For details, please refer to Part 5 – Schedules, Schedule 1 – Price Schedule); and
- (b) Document relating to the technical proposal (i.e. the original and triplicate copy of all other remaining information, forms, schedules and documents required by this invitation to tender but without any indication on the Rates for Provision of Service) must be enclosed in another sealed envelope clearly marked **“Envelope B”** and **“Provision of Service of Monitoring Work on Fishing Activities - Technical Proposal”** (For details, please refer to Appendix to Schedules); and
- (c) The tender comprising both Envelope A (Price Schedule) and Envelope B (Technical Proposal) must be enclosed in a sealed envelope (Envelope C) addressed to the person specified in the Part 1 - “Lodging of Tender” and clearly marked **“Tender Ref.: AFCD/MWFA/2020 – Provision of Service of Monitoring Work on Fishing Activities”**; and
- (d) Deposited to the Tender Box on or before the Tender Closing Date as stipulated in these Tender Documents. Late Tender will NOT be considered.

Note: Offer submitted in a form or manner other than that described above will not be considered further.

5.8 Any Tenderer who fails to submit any one of the followings shall be disqualified and its Tender shall not be considered further:

- (a) duly completed and signed Part 7 – Offer to be Bound;
- (b) information in Schedule 1 of Part 5 – Schedules (Price Schedule) in accordance with Clauses 5.7 and 7 of this Part;
- (c) information in Schedule 2 of Part 5 – Schedules (Payment Discounts and Contract Deposit Payment Method);

- (d) **information in Schedule 3 of Part 5 – Schedules (Company/Business Organization Details);**
- (e) **information in Schedule 4 of Part 5 – Schedules (Statement of Compliance);**
- (f) **information in Schedule 5 of Part 5 – Schedules (Non-collusive Tendering Certificate);**
- (g) **a Technical Proposal as required under Clause 4.2 of this Part; and**
- (h) **a recommendation letter from any local Fisheries Co-operative Society or Fishermen Association as required under Clause 4.2 of this Part.**

5.9 Figures shall not be altered or erased; any alteration shall be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments shall be initialed by the Tenderer in ink.

6. Tender Closing Date

- 6.1 A Tender MUST be submitted on or before the Tender Closing Date, i.e., on or before 12:00 noon on 26 November 2020 (Hong Kong Time). A late Tender will NOT be considered.
- 6.2 In case a black rainstorm warning signal is in force or typhoon signal no. 8 or above is issued between 9:00 a.m. and 12:00 noon (Hong Kong Time) on the Tender Closing Date, the Tender Closing Date will be extended to 12:00 noon (Hong Kong Time) on the next day which is not a Saturday, a Sunday or a general holiday under the General Holidays Ordinances (Cap.149).

7. Price Proposal

- 7.1 Each Tenderer shall quote the price in Schedule 1 of Part 5 – Schedules.
- 7.2 Each Tenderer is required to submit its Tender in either Hong Kong Dollars or US Dollars. Tender denominated in other currency will **not** be considered.
- 7.3 Every Tenderer shall ensure that the figures in Schedule 1 of Part 5 – Schedules are accurate before submitting their bids. Under no circumstances shall the Government be obliged to accept any request for price adjustment on grounds that a mistake has been made in the figures.
- 7.4 The rate of the price shall be deemed to be full inclusive values of the service to be executed and including but not limited to provision of labour, materials and equipment, taking precautions and safety measures, general obligations, liabilities, risk, insurance in the execution of the service, etc.

8. Validity Period

A Tender shall remain valid and open for acceptance by the Government for not less than one hundred and twenty (120) days after the Tender Closing Date.

9. Warranty against Collusion

- 9.1 By submitting a Tender, the Tenderer represents and warrants that in relation to its Tender:
- (a) it has not communicated and will not communicate to any person other than the Government the amount of any Tender price;
 - (b) it has not fixed and will not fix the amount of any Tender price by arrangement with any person;
 - (c) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a Tender; and
 - (d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process.
- 9.2 In the event that the Tenderer is in breach of any of the representations and/or warranties in Clause 9.1 above, the Government shall be entitled to, without compensation to any person or any liability on the part of the Government:
- (a) reject the Tender;
 - (b) if the Government has accepted the Tender, withdraw its acceptance of the Tender; and
 - (c) if the Government has entered into the Contract with the Tenderer, terminate the Contract.
- 9.3 The Tenderer shall indemnify and keep the Government fully indemnified against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties in Clause 9.1 above.
- 9.4 Any breach of any of the representations and/or warranties in Clause 9.1 above by the Tenderer may prejudice the Tenderer's future standing as a Government contractor.
- 9.5 Clause 9.1 above shall have no application to the Tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the Tender price, or with its professional advisers, consultants or sub-contractors to solicit their assistance in the preparation of Tender submission.
- 9.6 The rights of the Government under Clauses 9.2 to 9.4 above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

10. Company/Business Organization Status

- 10.1 The Tenderer shall provide the details relating to itself in Schedule 3 of Part 5 – Schedules.

- 10.2 The Tenderer should attach to its Tender a certified copy of the relevant document (e.g. Board Resolution of the Tenderer, confirmation letter, etc.) showing that the person or persons who is or are authorized to sign the Offer to be Bound has or have the authority to sign for and on behalf of the Tenderer.
- 10.3 If a Tenderer is not a company incorporated under the predecessor Companies Ordinance (Cap. 32) or Companies Ordinance (Cap. 622), and if the Tenderer is an entity formed or established outside Hong Kong, a legal opinion issued by a lawyer duly qualified to practise the laws of its place of incorporation, formation or establishment (as the case may be) of the Tenderer and acceptable to the Government shall be provided upon request by the Government on the following issues and any other issues as may be required by the Government:
- (a) that the Tenderer is duly incorporated, formed or established and validly existing under the laws of the place of the Tenderer's incorporation, formation or establishment and that the Tenderer has the full power and authority to carry on the business as it is now conducting and to provide the Service to the Government in accordance with the terms and conditions of the Contract; and
 - (b) that the Tenderer has the power to enter into and perform the Contract with the Government and that it has taken all necessary legal action to authorize the entry into and performance of the Contract (if it is to be awarded the Contract).

The Government may require the Tenderer to provide, at its own expenses, additional legal opinions satisfactory to the Government issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment of the Tenderer on any other matters arising from its Tender.

- 10.4 A Tenderer shall also provide in Schedule 3 of Part 5 – Schedules the information in respect of the organization structure of the Tenderer and the Licensee(s) (if applicable).

11. User Reference

A Tenderer shall provide in Schedule 3 of Part 5 – Schedules a list of government user(s) to whom similar services have been provided by the Licensee. If any of the above information is missing in a Tender and is not provided upon any request by the Government which may be made pursuant to Clause 15 of this Part, the Tender will not be considered further.

12. Counter-proposal

Any counter-proposal by a Tenderer on any aspect of the Tender may, at the Government's absolute discretion, render its Tender not to be considered further.

13. Basis for Acceptance

- 13.1 In this tendering exercise, **ONE** tenderer will be awarded the Contract for the provision of the Service. Acceptance of the offer will be made according to the assessment criteria as stipulated in Clause 14 below.
- 13.2 Notwithstanding anything contained herein to the contrary, the Government is not bound to accept the lowest offer or any Tender and reserves the right to accept all or any part of any Tender at any time within the Validity Period.

14. Tender Assessment

Without prejudice to other rights and powers of the Government not to consider a Tender hereunder, the evaluation of Tenders will be conducted as follows:

- (a) Completeness Check
A completeness check will be conducted by checking whether these Tender has been submitted in accordance with the procedural requirements stipulated in these Tender Documents. **Failure to submit any one of the documents as set out in Clause 5.8 of this Part shall render a Tender invalid and it shall not be considered further.**
- (b) Assessment of Compliance with Essential Requirements
A Tender which has passed the completeness check will be assessed for its compliance with the essential requirements stipulated in Clause 4 above. **Any Tender which fails to meet any of the essential requirements shall not be considered further.**
- (c) Technical and Price Proposals Assessments
Among the Tenders which satisfy all the essential requirements specified in Clause 4 above, the technical and price proposal assessments would be taken according to the marking scheme as specified in Appendix to Schedules. The Technical and Price assessments would occupy 60% and 40% of the overall assessment, respectively. Subject to other provisions in these Terms of Tender, the Tenderer who obtain the highest total score will normally be awarded with the Contract.

For price assessment purpose, any payment discounts offered by any Tenderer will **NOT** be taken into consideration.

15. Acceptance

- (a) The successful Tenderer will be notified within 120 days from the Tender Closing Date (such notification is referred to as “Conditional Acceptance of Tender”). Upon receipt of such Conditional Acceptance of Tender, the successful Tenderer shall be obliged to pay the Contract Deposit as required under Clause 20 of this Part to the Government within 21 days of the notification (or such later date as the Government may allow).

- (b) **Only upon due receipt by the Government of the Contract Deposit from the successful Tenderer, the Government will enter into the Contract with the successful Tenderer by issuing the Memorandum of Acceptance pursuant to paragraph (c) below.** The Contract will incorporate the Tender submitted by the successful Tenderer (subject to such other changes as the Government may stipulate in exercise of its powers under these Tender Documents or as the parties may agree). In the event that the successful Tenderer fails to provide the Contract Deposit (unless the payment of such is either unnecessary or waived by the Government in writing), the Conditional Acceptance of Tender will be declared void by the Government and of no further force, and the Government may disqualify the Tenderer concerned, whereupon the Government may, but is not obliged to, award the Contract to another Tenderer. Without prejudice to other rights and claims of the Government at law, the disqualified Tenderer shall be responsible for the difference of the price submitted by that Tenderer and the eventual Contractor who is awarded the Contract whether appointed pursuant to this invitation to tender or another subsequent tender exercise.
- (c) The successful Tenderer who has paid the Contract Deposit to the Government will receive the Memorandum of Acceptance in the form set out in Part 8 from the Government as an indication of unconditional acceptance. The Memorandum of Acceptance shall constitute the binding Contract. Tenderers who do not receive any notification within the Validity Period shall assume that their Tenders have not been accepted. A copy of each of the documents constituting the Contract will be attached to the Memorandum of Acceptance for record.
- (d) Without prejudice to the rights and powers under the Terms of Tender, unless and until the Government has issued the Memorandum of Acceptance indicating its unconditional acceptance pursuant to paragraph (c) above to the successful Tenderer, there is to be no binding Contract with that Tenderer.

16. Request for Information

In the event that the Government determines that:

- (a) clarification in relation to any part of the Tender is necessary; or
- (b) a certain document or a piece of information is missing in the Tender (other than the price information required in Schedule 1 of Part 5 – Schedules, or a duly completed and signed Part 7 – Offer to be Bound, or other items in respect of which it is expressly specified that its absence will result in the Tender not being considered further), it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the document or information. The Tenderer shall thereafter within five (5) working days or such other period as specified in the request submit such clarification, information or document. A Tender will not be considered further if complete information or document is not provided as required by the deadline specified in the request, or in the case of clarification, such clarification is not acceptable to the Government. As an alternative to

seeking clarification or submission, the Government may not consider the Tender further or may proceed to evaluate the Tender on an “as is” basis.

17. Tenderer’s Enquiries

- 17.1 Any enquiries from the Tenderer concerning these Tender Documents, including Part 6 – Specifications up to the date of lodging its Tender with the Government shall be made in writing to:

Director of Agriculture, Fisheries and Conservation,
Agriculture, Fisheries and Conservation Department,
5/F., Cheung Sha Wan Government Offices,
303 Cheung Sha Wan Road, Kowloon,
Hong Kong.
(Attn.: Dr. Khaki Chan, Fisheries Officer)
Fax No. : (852) 2314 2866

- 17.2 After lodging a Tender with the Government, the Tenderer shall not attempt to initiate any contact, whether direct or indirect, with the Government concerning its Tender or these Tender Documents. The Government shall have the sole right to initiate any such contact with any Tenderer and all such contacts and any replies of the Tenderer thereto shall be in writing or formally documented in writing.

18. Unreasonably Low Price

The Government may require a Tenderer who in the opinion of the Government, has submitted an unreasonably low price, to justify and demonstrate to the reasonable satisfaction of the Government that such Tenderer is capable of carrying out and completing the Contract. Failure to justify and demonstrate to the Government’s satisfaction would entitle the Government to reject the Tender without having to give any reason(s) for the rejection.

19. Tender Negotiation

The Government reserves the right to negotiate with any Tenderer about the terms of its Tender.

20. Award of Contract and Contract Deposit

- 20.1 The successful Tenderer will receive a Letter of Conditional Acceptance, by fax or post, from the Government notifying its conditional acceptance of offer. This Letter of Conditional Acceptance will, notwithstanding any content therein to the contrary, have the effect that the Government accepts its Tender (as the case may be and as specified therein) subject to the payment of Contract Deposit pursuant to Clause 20.2 of this Part and any other conditions as the Government may specify therein as condition(s) precedent to the Contract.
- 20.2 Should the actual contract value exceeds HK\$1.4 million but does not exceed HK\$15 million, the successful Tenderer shall furnish a Contract Deposit to the Government within fourteen (14) days from the date of receipt of Letter of

Conditional Acceptance, an amount equivalent to two percent (2%) of the actual contract value as a security for the due and faithful performance of the Contract. The Contract Deposit may be payable either in cash or in the form of a banker's guarantee in substantially the form as in Appendix A to Part 4 – Conditions of Contract, issued by a bank holding a valid banking licence under the Banking Ordinance (Cap. 155). Tenderers should elect the method they prefer in Schedule 2 of Part 5 – Schedules. In the event that a Tenderer fails to elect the method of providing a Contract Deposit in Schedule 2, it will be assumed that the Tenderer will pay the Contract Deposit by way of cash.

- 20.3 If the successful Tenderer who receives the Letter of Conditional Acceptance fails to comply with Clause 20.1, the Letter of Conditional Acceptance will lapse and be of no further effect and the Government shall be at liberty to award the Contract to another Tenderer who is fully capable of undertaking the Contract and whose Tender is determined by the Government to be the most advantageous to the Government.
- 20.4 The Government will notify all Tenderers the result of the tendering exercise as soon as practicable. Tenderers who do not receive any notification within the Validity Period may assume that their Tenders have not been accepted.

21. Prevention of Bribery Ordinance

The Tenderer shall not and shall ensure that his agents, employees and sub-contractors shall not offer or give any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) to any agent or employee of the Government. Any breach of or non-compliance with this Clause by the Tenderer, shall, without affecting the Tenderer's liability for such breach or non-compliance, render its Tender invalid or result in termination of the Contract awarded.

22. Costs of Preparing the Tender

Every Tenderer submits its Tender at its own cost and expense. The Government will not be liable for any costs and expenses whatsoever incurred by the Tenderer in connection with the preparation or submission of its Tender or in any related communication with the Government, whether before, on or after the Tender Closing Date.

23. Personal Data Provided

- 23.1 The personal data of any individual provided by the Tenderer in the Tender will be used for Tender evaluation and Contract award purposes.
- 23.2 The personal data provided in the Tender may be disclosed to the parties responsible for Tender evaluation in other government departments and non-government organizations.
- 23.3 Individuals to whom the personal data belong have the right of access and correction with respect to personal data as provided in sections 18 and 22 and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap. 486). The

right of access includes the right to obtain a copy of the personal data provided in the Tender.

- 23.4 Enquiries concerning the personal data collected by means of the Tender, including the making of access and corrections, should be addressed to Personal Data Privacy Officer of AFCD.

24. Consent to Disclosure

For the purposes of this invitation to tender, including the evaluation and processing purposes, and for all other purposes arising from or incidental to this invitation to tender (including the resolution of any dispute arising from this invitation to tender), the Government shall have the right (but not obligation to whomsoever) to disclose whenever it considers appropriate or upon request by any third party (written or otherwise) information concerning any of the Tenderers or the Tender submitted by that Tenderer, without any further reference to that Tenderer, including but without limitation to the name of the Tenderer and the prices proposed in its Tender.

25. Cancellation of Tender

Without prejudice to the Government's right to cancel the tender at its absolute discretion or for public interest reasons, where there are changes of the requirement after the Tender Closing Date for operational or whatever reasons, the Government is not bound to accept any conforming tender and reserves the right to cancel the tender exercise.

26. Documents of Unsuccessful Tenderers

Documents of unsuccessful Tenderers will be destroyed within three (3) YEARS after the Contract has been awarded.

27. Statement of Compliance

A Tenderer shall confirm in Schedule 4 of Part 5 – Schedules that the Service offered is in compliance with Part 6 – Specifications. Without prejudice to other provisions of these Tender Documents, a Tenderer who expressly indicates non-compliance with any of the Service Requirements in Part 6 – Specifications will result in its Tender not being considered further.

28. Offer to be Binding

- 28.1 All parts of these Tender Documents submitted and offered by the Tenderer shall be binding on the Tenderer. A Tenderer is deemed to have satisfied itself as to the correctness of its Tender. In the event that a Tenderer discovers an error in its Tender after the Tender has been deposited, the Tenderer may correct the same in a separate letter before the Tender Closing Date. No request for adjustment or variation whatsoever shall be allowed or entertained after the Tender Closing Date.
- 28.2 By signing the Part 7 – Offer to be Bound, a Tenderer confirms that its offer has been made subject to the terms and conditions contained in these Tender

Documents, and any variation or adjustment agreed with the Government and upon acceptance by the Government will be incorporated into and form part of the Contract.

29. Monitoring of Contractor's Performance

Tenderers are advised that should the Contract be awarded by the Government, the successful Tenderer's performance of the Service under the Contract will be monitored and may be taken into account when the Government evaluates any future tenders or quotations that the successful Tenderer may submit. A Tender will be rejected if, by the Tender Closing Date, the Tenderer is under suspension from tendering for the government contracts.

30. New Information Relevant to Qualified Status

Tenderers should inform the Government in writing immediately of any factor which might affect their qualified status as an enlisted supplier with the Government, or as a qualified supplier for a particular service. The Government reserves the right to review their qualified status in the light of any new information relevant to their qualification.

31. Briefing Session

- 31.1 A tender briefing session will be held for this invitation to tender. Tenderers are strongly advised to attend the tender briefing session before submitting their Tenders in order to fully acquaint themselves with the requirements in the Tender documents and to determine the scale and costs of the Service to be provided. Details of the briefing session are as follows:

Time: 10:00 am

Date: 28 October 2020 (Wednesday)

Venue: Room 701

7/F., Cheung Sha Wan Government Office
303 Cheung Sha Wan Road,
Kowloon.

Tenderers wishing to attend the briefing session must complete and return by facsimile (fax no. 2314 2866) the registration form at the Appendix B of this part on or before 26 October 2020.

- 31.2 Each Tenderer is advised to send no more than two representatives to attend the tender briefing session due to limited seating capacity.

Appendix A to Terms of Tender**Registration Form for the Tender Briefing Session****Tender for the Provision of Service of
Monitoring Work on Fishing Activities to the
Agriculture, Fisheries and Conservation Department****(Tender Reference: AFCD/MWFA/2020)**

To: Director of Agriculture, Fisheries and Conservation
8/F, Cheung Sha Wan Government Office,
303 Cheung Sha Wan Road, Kowloon
Fisheries Enforcement and Special Projects Division
Licensing and Enforcement Section
(Attn: Dr. Khaki Chan, Fisheries Officer)
Facsimile: (852) 2314 2866

We will attend the tender briefing for the above tender

Time: 10:00 am

Date: 28 October 2020 (Wednesday)

Venue: Room 701

7/F., Cheung Sha Wan Government Office
303 Cheung Sha Wan Road,
Kowloon.

Company Name _____

Person to attend:

Name _____

Position _____

Tel No. _____

Fax No. _____

Date _____

Note : 1. The registration form should be completed and returned by facsimile on or before 26 October 2020. Late registration will not be accepted.

Note : 2 Each company should register no more than 2 persons for the tender briefing session due to limited seating capacity.

Note : 3. Please provide a list of the company's questions, if any, together with this registration.

Appendix B to Terms of Tender

Contact Details

Contact details of:

All correspondence with the Government or Government Representative relating to matters concerning the Contract from the Contractor shall be addressed to contact at (1) provided that

(a) all enquiries concerning the Service Specifications or other technical aspects of the Service to be lodged by a potential Tenderer; and

(b) all correspondence and notices concerning the Order and inspection of the Service.

(1) the Government (Procuring Department):

Address: 5/F., Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road,
Kowloon, Hong Kong.

Attn.: Mr. Henry LAW

Facsimile Number: 2735 4516

Email Address: henry_cm_law@afcd.gov.hk

(2) the Tenderer/Contractor:

Address:

Attn.:

Telephone Number:

Facsimile Number:

Email Address:

**Tender for the Provision of Service of
Monitoring Work on Fishing Activities to the
Agriculture, Fisheries and Conservation Department**

PART 4 – CONDITIONS OF CONTRACT

Contents

1. Contract Period
2. Contractor's Obligations
3. Services to be Provided by the Contractor
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Appendix – Form of banker's guarantee for performance of contract

CONDITIONS OF CONTRACT**1. Contract Period**

- 1.1 The Contract Period will commence from 1 January 2021 or the date of Letter of Conditional Acceptance, whichever is later, until the Expiry Date, subject to the early termination or extension of the Contract as provided in the Contract.
- 1.2 The Contract Period and implementation schedule are set out in Part 6 – Specifications for Contractor's reference only. The actual Contract Period shall commence from the date of Letter of Conditional Acceptance until the Expiry Date, both dates inclusive.
- 1.3 The Government may, by serving a not less than one (1) month's prior written notice on the Contractor, extend the Contract for a period up to an aggregate maximum of six (6) months on the same terms and conditions contained in the Contract. The extended Contract Period commences immediately upon the expiry of the current Contract Period.
- 1.4 Where the Contract Period is extended pursuant to Clause 1.3, the Contract shall continue to be in full force and effect (including this Clause 1) on the same terms and conditions.

2. Contractor's Obligations

The Contractor shall:

- (a) plan and conduct monitoring, collect information/intelligence and assist in conducting enforcement operation in accordance with Clause 3 of this Conditions of Contract and Part 6 – Specifications of these Tender Documents;
- (b) comply with all instructions of the Government Representative in relation to the Service;
- (c) notify the Government Representative forthwith of any matter that may materially affect the Contractor's provision of the Service under this Contract; and
- (d) at all times throughout the Contract Period comply with all the laws, regulations and by-laws applicable to the provision of the Service, including obtaining and maintaining any required authorization, licences, permits and approvals under any such laws, regulations and by-laws.

3. Service to be provided by the Contractor

- 3.1 The Contractor shall conduct routine patrols and collect related information/intelligence and assist in conducting enforcement operation of AFCD:
- (a) Routine Patrols and Information/Intelligence Collection

- i. The Contractor shall comply with the instructions by AFCD for planning the patrol route and collecting information/intelligence;
 - ii. If the Contractor encountered non-local fishing vessels either fishing or not fishing, they shall inform police and AFCD for further actions;
 - iii. If the Contractor encountered the non-local fishing vessels and confirmed that the non-local fishing vessels left their fishing gears in the sea, the Contractor shall inform AFCD and remove these fishing gears in accordance with AFCD's instructions;
- (b) Providing support during enforcement operation of AFCD
- When AFCD conducts any enforcement operation, the Contractor shall assist AFCD to collect illegal fishing intelligence in accordance with AFCD's instructions before and during the operation so that the commander of the enforcement operation can make/fine tune the respective arrangement and action with reference to the intelligence collected.

3.2 For each illegal fishing case, including those mentioned in 3.1 (a)ii and (b) above, that was discovered by the Contractor, the Contractor shall prepare a statement with signature as requested by AFCD. The Contractor shall be a witness in court if necessary.

3.3 If the Contractor discover any suspected case of illegal fishing, record sheet, i.e., Monitoring Report, shall be filled in and be submitted to AFCD within 7 days after the discovery as specified in Part 6 – Specifications.

4. Termination of Contract

- 4.1 Notwithstanding any other provisions herein, the Government may at any time during the Contract Period, at its absolute discretion and without cause, terminate the Contract by giving not less than three (3) months' prior written notice to the Contractor.
- 4.2 Without prejudice to any rights and claims of the Government under the Contract or otherwise at law, the Government will be entitled to forthwith terminate the Contract if any of the following events occurs –
- (a) the Contractor fails to observe or perform any of the terms and conditions of the Contract or pay any of the sums payable by the Contractor under the Contract, or (in the case of a breach capable of being remedied but not otherwise) the Contractor has failed to remedy the breach to the satisfaction of the Government Representative within 7 days (or such longer period as the Government Representative may at his sole discretion allow) after the issuance of a request in writing (such request shall contain a warning of the Government's intention to terminate the Contract) requiring the Contractor to do so;
 - (b) the Contractor abandons the Contract in part or in whole;

- (c) the Contractor is found to have employed illegal workers in the execution of this Contract;
 - (d) the Contractor, any officer (including director), employee, agent or sub-contractor of the Contractor commits an offence under the Prevention of Bribery Ordinance (Cap. 201) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the Government.
- 4.3 The Government may also by a written notice to the Contractor terminate the Contract immediately upon the occurrence of any of the following events:
- (a) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
 - (b) if the Contractor is a body corporate, a shareholders' or members' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation);
 - (c) a petition is presented for the winding-up of the Contractor, which is not dismissed within 14 days after the petition is presented;
 - (d) the Contractor is or becomes insolvent;
 - (e) a receiver is appointed over the whole or any part of the Contractor's business or assets;
 - (f) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - (g) the Government reasonably apprehends that any of the events mentioned above is about to occur.
- 4.4 On termination of the Contract for any reason, the Government is under no further obligation to the Contractor under the Contract without thereby releasing the Contractor from any of its liabilities under the Contract, or affecting any rights and powers conferred upon the Government by the Contract.
- 4.5 The expiry or termination of the Contract will not affect any accrued rights or liabilities of either party nor will it affect any provision of the Contract which is expressly or by implication intended to come into or continue to be in force on or after such expiry or termination.
- 4.6 Upon expiry or termination of the Contract in accordance with the terms and conditions of the Contract hereof, the Contractor shall, at its own costs and expenses:-
- (a) within a reasonable time, make good any physical damage caused to any property of the Government or of any other person and reinstate such property in a good and workmanlike manner, failing which the Contractor

shall pay, promptly and fully, compensation for any such damage caused or costs incurred by the Government in making good such damage;

- (b) immediately return to the Government all documents containing confidential information, personal data and such other information, property and materials in the possession or under the control of the Contractor or any of its sub-contractors and agents, which was obtained or produced in the course of providing the Service;
 - (c) assist and co-operate with the Government to ensure an orderly transition of the provision of the Service to such person as specified by the Government Representative and/or the completion of any work-in-progress;
 - (d) within 28 days of the date of expiry or termination, compile and submit to the Government a report of all relevant information, facts, data, findings and conclusions in respect of the Service which have been provided up to the expiry or effective date of termination; and
 - (e) promptly provide all information concerning the provision of the Service which may reasonably be requested by the Government for the purposes of adequately understanding the manner in which the Service has been provided or the purpose of allowing the Government or a replacement contractor to conduct due diligence.
- 4.7 Save as otherwise expressly provided for in the Contract, no compensation whatsoever (including compensation for any loss or expense arising from any consequential loss or damage, or loss of opportunity, suffered or incurred by the Contractor) will be payable by the Government to the Contractor as a result of any early termination of the Contract by the Government.

5. Contractor's Undertakings

The Contractor warrants and undertakes to the Government that:-

- (a) the Contractor has the full capacity, power and authority to enter into this Contract;
- (b) the Service shall be performed in a timely and diligent manner and the Contractor and any person employed, used or engaged by the Contractor for the performance of its duties and obligations under the Contract shall use all experience, skill, care and diligence in the provision of the Service and the discharge of all the Contractor's duties and obligations under the Contract as may be expected from a person who is an expert in performing service of a similar kind.

6. Payment for Service

- 6.1 All service performed will be subject, before payment, to inspection by the Government Representative who may withhold payment when the Service has not been performed in strict accordance with the requirements of the Contract. Payment for Service will be made only if the Service has been provided to the Government Representative's full satisfaction and in accordance with the Contract.

- 6.2 Payment shall be made monthly upon complete submission of the Monitoring Reports to the satisfaction of the Government Representative within that particular month.
- 6.3 Invoices shall be sent by the Contractor to the Government Representative or as otherwise directed. Unless otherwise specified, payment shall be made after the Service has been performed in accordance with the requirements of the Contract. The Government Representative may, at his discretion, order such payments to be made, as he considers appropriate.
- 6.4 All invoices and correspondences for payments should be sent to the Government Representative's address as specified in Clause 17.1 of Part 3 – Terms of Tender. The Government shall not be held responsible for any delay in payment for inaccurate or unsupported invoices or misdirection due to inaccurate recipient's address.

7. Set Off

Where the Contractor has incurred any liability to the Government, whether at law or in equity, and whether such liability is liquidated or unliquidated, the Government may set off, whether at law or in equity, the amount of such liability against any sum then due or which at any time thereafter may become due from the Government to the Contractor under this Contract or any other contracts.

8. Variation

Subject to the terms and conditions of the Contract, no waiver, cancellation, alteration or amendment of or to the terms and conditions of the Contract shall be valid unless made by an instrument in writing and duly signed by both parties.

9. Assignment

- 9.1 Neither party shall assign or otherwise transfer the Contract or any of its rights and obligations there under whether in whole or in part without the prior consent of the other party. This shall include the assignment of the Contract in whole or in part to the Contractor's parent corporation or a company in the same group. Any assignment by the Contractor in breach of this Clause shall be a fundamental breach and shall entitle the Government to immediately and without notice terminate the Contract.
- 9.2 Any assignment approved by the parties under Clause 9.1 above shall be in the standard format approved by the Government.

10. Sub-Contracting

The Contractor may, subject to the prior written approval of the Government, engage the services of sub-contractors to assist it with its duties under this Contract, provided that the Contractor:

- (a) shall not be relieved from any of those duties by engaging any such sub-contractor and shall remain fully liable to the Government for their

performance; and

- (b) shall, without argument or delay, first secure legally binding obligations from any such sub-contractor in providing its service to the Contractor which are entirely consistent with the performance by the Contractor of its contractual obligations (including this Clause).

11. Government Property

Where any Government property is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property. Should any such property be lost or damaged by any cause whatsoever while in the possession or control of the Contractor or its servants, workmen or agents, the Contractor shall pay for the same at the original cost plus 20%. A count of the articles or material in the possession of the Contractor may be made at any time by the Government Representative and the Contractor shall render all such assistance as is necessary for this purpose.

12. Government Premises / Contractor Premises

- 12.1 The Contractor shall ensure that all persons engaged by it in carrying out the Service keep to such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.
- 12.2 Where the Service is carried out on the Contractor's premises, such premises shall be open to inspection by the Government Representative at all reasonable times.

13. Relationship of the Parties

The Contractor enters into the Contract with the Government as an independent contractor only and shall not represent itself as an employee, servant, agent or partner of the Government.

14. Liability for Damages & Indemnity

- 14.1 The Government and its employees or agents shall not be under any liability whatsoever for or in respect of:-
 - (a) any loss of or damage to any of the Contractor's property or that of its employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise); or
 - (b) any injury to or death of any of the Contractor's employees or agents, save and except any such injury or death is caused by the Negligence of the Government or any of its employees or agents.
- 14.2 The Contractor shall indemnify the Government and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by the Government or any of its employees or agents in respect of:

- (a) any loss, damage, injury or death referred to in Clause 14.1 (save and except for any injury or death caused by the Negligence of Government or any of its employees or agents); and
 - (b) any loss or damage sustained by or any injury to or death of any third party in consequence of any Negligence of the Contractor or any of its employees or agents.
- 14.3 The Contractor shall indemnify the Government against any loss of or damage to any property of the Government or of any of its employees or agents or any injury to any employee or agent of the Government arising out of the Negligence of the Contractor or any of its employees, sub-contractors or agents.
- 14.4 In the event that any of the Contractor's employees or agents suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall within 3 clear days give notice in writing of such injury or death to the Government Representative.
- 14.5 For the purposes of this Clause, "Negligence" shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71).

15. Confidentiality

- 15.1 The Contractor shall treat as confidential all information, drawings, specifications, documents, contract, design materials and all other data (including without limitation any personal particulars records and Personal Data (as defined in the Personal Data (Privacy) Ordinance (Cap. 486)) and materials of any nature (in or on whatever media)) accessible by the Contractor under this Contract or which the Government has for the purposes of or in the course of performing this Contract, disclosed, supplied, made available or communicated to the Contractor and which the Government has designated as confidential PROVIDED THAT this Clause 15.1 shall not extend to any information which was rightfully in the possession of the Contractor during the tender exercise or which is already in the public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause).
- 15.2 The Contractor shall indemnify and keep the Government its employees and authorized persons fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising from or incurred by reason of any actions and/or claims made in respect of information subject to the Personal Data (Privacy) Ordinance (Cap. 486) which action and/or claim would not have arisen but for the negligence or omission of the Contractor, any of its employees, sub-contractors or agents (or any one acting on its/their behalf) in connection with the provision or receipt of the Service or any service provided under this Contract.
- 15.3 The Contractor hereby agrees that it will use the confidential information described in Clause 15.1 solely for the purposes of this Contract and that it will not, at any time whether during or after the completion, expiry or termination (howsoever occasioned) of this Contract use or allow to be used the same for any other purposes without the Government's prior written consent.

- 15.4 The Contractor undertakes to take all such security measures for the protection of the information, documentation and materials which it is obliged by Clause 15.1 to keep secret and treat as confidential as it takes for the protection of its own confidential or proprietary information, documentation and materials.
- 15.5 The Contractor shall ensure that each of its employees, agents, associates, sub-contractors, consultants and any other persons engaged in any work in connection with this Contract are aware of and comply with the provisions of this Clause and the Official Secrets Ordinance (Cap. 521) and the Contractor shall indemnify the Government and keep the Government fully and effectively indemnified against all actions, costs (including without limitation to the fees and disbursements of lawyers, agents and experts witnesses), claims, demands, expenses, loss, damage and liabilities whatsoever which the Government may suffer, incur or sustain as a result of any breach of confidence (whether under this Contract or general law) by any such persons.
- 15.6 The Contractor undertakes, if so requested by the Government, to sign the Government's separate confidentiality agreement in a form prescribed by the Government and to procure each of its employees, agents, associates, sub-contractors and consultants to whom any confidential information is required to be disclosed to do so.
- 15.7 The Contractor further agrees that it will not at any time, whether by itself or through any subsidiary or agent, use, sell, licence, sub-licence, create, develop or otherwise deal with any confidential information supplied to it by the Government or obtained by it while performing this Contract.
- 15.8 The Contractor shall promptly notify the Government and give the Government all necessary assistance in connection with any proceedings which the Government may institute against any such persons pursuant to any of the provisions in this Clause.
- 15.9 The provisions of this Clause shall survive the completion, expiry or termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such completion, expiry or termination.

16. Contract Deposit

- 16.1 Should the actual contract value exceeds HK\$1.4 million but does not exceed HK\$15 million, the Contractor shall furnish a Contract Deposit to the Government within fourteen (14) days from the date of receipt of Letter of Conditional Acceptance, an amount equivalent to two percent (2%) of the actual contract value as security for the due and faithful performance of the Contract. The Contract Deposit may be payable either in cash or in the form of a banker's guarantee in substantially the form as appears in **Appendix** to this Part issued by a bank in Hong Kong holding a valid banking licence under the Banking Ordinance (Cap. 155).
- 16.2 Upon the expiry or early termination of the Contract and on condition that all the Contractor's obligations have been performed and discharged to the satisfaction of the Government and subject to the Government's exercise of its right to make any deduction from the Contract Deposit under Clause 16.3, the Government shall refund the balance of the Contract Deposit, if paid in cash, to the Contractor,

without interest. If a banker's guarantee is provided, such guarantee shall be discharged or released on condition that all the Contractor's obligations shall have been fully observed and complied with to the satisfaction of the Government Representative and after the recovery of any sums due from the Contractor to the Government.

- 16.3 If the Contractor is in breach of any provisions of the Contract, without prejudice to any other rights or remedies the Government has or may have against the Contractor, the Government may deduct from the Contract Deposit (and in the event that the Contract Deposit is paid by the way of a banker's guarantee, to call on the banker's guarantee the amount) of any costs, damages, losses or expenses incurred or suffered by the Government as a result of (whether directly or indirectly) such breach by the Contractor, and any sums that are due to the Government under the Contract, whether or not demand has been made.
- 16.4 The Contract Deposit shall be wholly forfeited to the Government in the event that the Contract is terminated in accordance with the terms hereof (save in the case of termination by notice pursuant to Clause 4.1).
- 16.5 If any deduction is made by the Government from the Contract Deposit or a call is made on the banker's guarantee during the Contract Period, the Contractor shall, within twenty-one (21) days on demand in writing by the Government Representative, deposit a further sum, or reinstate the level or extent of the banker's guarantee in a sum equal to the amount so deducted or so called which further sum shall be added to the residue of and form part of the Contract Deposit, or procure the issuance of a fresh banker's guarantee.
- 16.6 If the Contractor fails to replenish the Contract Deposit in accordance with Clause 16.5, without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract forthwith by notice in writing to the Contractor.

17. Exchange of Correspondence

- 17.1 This Contract is arranged on behalf of AFCD and payment in respect of the service provided thereof shall be arranged by AFCD. To enable speedy payment to be made, invoices and correspondences concerning payment should be forwarded to the Director of AFCD. The Government shall not be held responsible for any delay in payment if invoices and correspondences concerning payment are not properly addressed.
- 17.2 The Contractor should note that any correspondences on any contractual matters should be addressed to the Director of AFCD (*Attn.*: Supplies Officer) at facsimile: (852) 2735 4516 for processing.
- 17.3 Correspondences on technical matters may be exchanged between the Contractor and the Director of AFCD (*Attn.*: Dr. Khaki Chan, Fisheries Officer) at facsimile: (852) 2314 2866 provided that any such correspondence is copied to the Director of AFCD (*Attn.*: Supplies Officer) in accordance with Clause 17.2 above.

18. Severability

In the event that any provisions of the Contract or any parts of any such provisions shall at any time be adjudged to be invalid, unlawful, illegal, voidable or otherwise howsoever unenforceable under any applicable laws of Hong Kong, such provisions or such parts of such provisions, as the case may be, to but only to the extent required by such laws, shall be severed from the Contract and rendered ineffective so far as possible without modifying the remaining provisions thereof.

19. Time of the Essence

Time shall be of the essence of the Contract, both as regards the times, dates and periods mentioned and as to any times, dates and periods as may be substituted by agreement in writing by the Government and the Contractor.

20. Non-waiver

No failure, delay, forbearance, or indulgence by the Government relating to the exercise of any right, power, privilege or remedy provided under this Contract shall operate as a waiver of such right, power, privilege or remedy or as a waiver of any preceding or succeeding breach by the Government, nor shall any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of such or any other right, power, privilege or remedy provided under this Contract or the laws of Hong Kong (all of which are several and cumulative and are not exclusive of each other).

21. Corrupt Gifts

- 21.1 If the Contractor or any employee or agent of the Contractor shall be found to have committed an offence under the Prevention of Bribery Ordinance (Cap. 201) or any subsidiary legislations made thereunder or under any laws of a similar nature in relation to the Contract or any other Government contracts, the Government Representative may, on behalf of the Government, summarily terminate the Contract forthwith, without entitling the Contractor to any compensation therefor.
- 21.2 The Contractor shall be liable of all expenses necessarily incurred by the Government as a result of the termination of the Contract.

22. Publicity

The Contractor shall submit to the Government Representative all advertising or other publicity material relating to the Contract or other work done in connection with the Contract wherein the Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied. The Contractor shall not publish or use any advertising or other publicity material without the prior written consent of the Government Representative.

23. Governing Law and Jurisdiction

The Contract shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Contract.

24. Service of Notice

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Contract or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered by hand or by pre-paid letter or facsimile and shall be deemed to have been served if by hand when delivered, if by post 48 hours after posting and if by facsimile when dispatched.

25. Insurance

25.1 The Contractor shall throughout the Contract Period and at its own costs take out and maintain a public liability insurance (“Insurance Policy”) with a minimum indemnity amount of HK\$10,000,000 per incident and for an unlimited number of claims arising during the Contract Period from injury to or death of any persons and for loss or damage to any property where such injury, death, loss or damage (as the case may be) is caused by or arises out of any act, negligence or default of the Contractor or its employees, agents or sub-contractors.

25.2 The Insurance Policy shall:

- (a) be for the benefit in the name of the Contractor;
- (b) contain a clause whereby the insurer shall irrevocably and unconditionally waive any right of subrogation or any other right or claim against the Government; and
- (c) be issued by an insurance company authorized to carry on the relevant insurance business under the Insurance Ordinance (Cap. 41).

25.3 Upon commencement of the Contract, the Contractor shall deposit with the Government Representative for record, and immediately upon renewal, copies of such policies of insurance, or if not available, copies of the insurance certificates, together with the receipt of payment of the current premium, certified as true and correct by the project manager.

25.4 Under no circumstances shall the Government be responsible for the premium payable under the Insurance Policy.

25.5 The Contractor shall conform to the terms and conditions of the Insurance Policy and all reasonable requirements of the insurer in connection with the settlement of claims, the recovery of losses and the prevention of accidents. The Contractor shall not do or permit to be done any act or omission whereby any of the Insurance Policy shall be rendered void or voidable, or which would otherwise amount to a breach of the Insurance Policy. The Contractor shall bear the economic consequences of, and indemnify the Government in full from and against any loss and liability which may arise from, any failure of the Contractor to observe and comply with this Clause.

26. Illegal Workers

The Contractor undertakes not to employ illegal workers in the performance of this Contract or any other Government contracts. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government Representative may by notice terminate this Contract forthwith pursuant to Clause 4 of this Part.

27. Contracts (Rights of Third Parties) Ordinance

The parties hereby declare that nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

28. Conflict of Interest

28.1 The Contractor shall during the Contract Period and for six (6) months thereafter:

- (a) ensure that it (including each and every officer, employee and agent of the Contractor) and each of its sub-contractors and each of their respective employees, officers and agents engaged in the discharge of the obligations hereunder, and each of their respective associates and associated persons (collectively “Restricted Group”) shall not undertake any business, activity, service, task, or job or do anything whatsoever for its own account (whether on its own or in conjunction with another person(s) in a joint venture or partnership or other business entity) or for or on behalf of another person (other than in the proper performance of the Contract) which conflicts or which may be seen to conflict with the Contractor’s duties or obligations under the Contract without the prior written approval of the Government; and
- (b) forthwith notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the interests (of whatsoever nature) of the Contractor or any other member of the Restricted Group, conflict or compete, or may be seen to conflict or compete, with the Contractor’s duties or obligations under the Contract.

28.2 The Contractor shall ensure that itself and each other member of the Restricted Group shall keep themselves informed and that each other member of the Restricted Group shall inform the Contractor and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which its and/or their interests conflict or compete, or may be seen to conflict or compete, with the Contractor’s obligations under this Contract.

28.3 In the Contract:

- (a) “associate” of a person means:
 - (i) a relative or partner of that person; or
 - (ii) a company one or more of whose directors is in common with one or more of the directors of that person;
- (b) “associated person” of a person means:
 - (i) any person who has control, directly or indirectly, over the second-mentioned person;

- (ii) any person who is controlled, directly or indirectly, by the second-mentioned person; or
 - (iii) any person who is controlled by, or has control over, the person mentioned in (i) or (ii) above;
- (c) “control” over another person (“person under control”) means the power of a person to secure:
- (i) by means of the holding of shares or interests or the possession of voting power in or in relation to that person under control or any other person;
 - (ii) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that person under control or any other person; or (iii) by virtue of holding office as a director in that person under control or any other person;
- that the affairs of the person under control are conducted in accordance with the wishes of that person exercising control;
- (d) “director” means any person occupying the position of a director by whatever name called and includes a de facto or shadow director;
- (e) “relative” means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parents and the step parent; and
- (f) “Restricted Group” has the meaning given to it above.

29. Force Majeure

- 29.1 If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the Government in writing concerning such matter and provide the Government with all relevant information as the Government may request.
- 29.2 Within seven (7) days after the occurrence of a Force Majeure Event or earlier, the Contractor shall notify the Government in writing of the full particulars of the Force Majeure Event including its nature, extent, how the Force Majeure Event has and/or will materially prevent it from performing the Contract or such part thereof, and likely duration of such material prevention.
- 29.3 Provided the Government is satisfied with the Contractor’s claim of a Force Majeure Event which has materially prevented and/or will continue to materially prevent it from performing its obligations under the Contract or such part thereof, the Contract or such part thereof strictly to the extent of such prevention shall be suspended during the subsistence of such Force Majeure Event commencing from a date to be agreed between the Parties (“Suspension due to Force Majeure”). Where the Government is not so satisfied about any alleged claim of a Force Majeure Event, there shall be no Suspension due to Force Majeure. The Contractor may not allege or claim any event as a Force Majeure Event. Any failure by the Contractor to perform any obligation under the Contract shall be treated as default and entitles the Government to terminate the Contract or partially terminate the Contract.

30. Entire Agreement

- 30.1 The Contract constitutes the whole agreement between the Parties and supersedes any previous agreements or arrangements between them relating to the subject matter hereof. The Contractor acknowledges that in entering into the Contract, it has not relied on any statements, warranties or representations given or made by the Government. On the other hand, the Government has relied on the warranties when entering into the Contract.
- 30.2 All of the provisions of the Contract shall remain in full force and effect notwithstanding the completion of the Services (except insofar as those obligations which have been fully performed).

31. Order of Precedence

- 31.1 In the event of, and only to the extent of, any conflict or inconsistency amongst or between any provisions of the Contract, the following order of precedence shall be applied, but only in so far as is necessary to resolve that conflict or inconsistency:
- (a) the Conditions of Contract;
 - (b) the Specifications;
 - (c) the Terms of Tender;
 - (d) the Interpretation;
 - (e) the Schedules;
 - (f) other Tender Documents which forms part of the Contract; and
 - (g) any other materials which were submitted by the Contractor as part of its Tender and attached to the Contract.

Appendix to Conditions of Contract

Form of banker's guarantee for performance of contract

THIS GUARANTEE is made the day
of
BETWEEN
.....of
....., a bank within a meaning of the Banking Ordinance (Cap. 155) (hereinafter called the "Guarantor") of the one part and The Government of the Hong Kong Special Administrative Region (hereinafter called the "Government") of the other part.

WHEREAS

(A) By a contract (hereinafter called the "Contract") dated the day
of made
between
of
.... (hereinafter called the "Contractor") of the one part and the Government of the other
part (designated as Agriculture, Fisheries and Conservation Department Contract
No. of), the Contractor agreed and undertook to perform the
Provision of Service of Monitoring work on Fishing Activities to the Agriculture, Fisheries
and Conservation Department upon the terms and conditions of the Contract.

(B) The Guarantor has agreed to guarantee in the manner and on the terms and
conditions hereinafter appearing, the due and faithful performance of the Contract
by the Contractor.

Now the Guarantor HEREBY AGREES with the Government as follows:-

- (1) Where applicable, words and expressions used in this Guarantee shall have the meaning assigned to them under the Contract.
- (2) In consideration of the Government entering into the Contract with the Contractor-
 - (a) The Guarantor hereby irrevocably and unconditionally guarantees the due and punctual performance and discharge by the Contractor of all of his, her and their obligations and liabilities under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and discharge all liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be incurred by the Government by reason or in consequence of any default on the part of the Contractor in performing or observing any of the obligations, terms, conditions, stipulations or provisions of the Contract.
 - (b) The Guarantor, as a principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government against and shall pay to the Government on

demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Contractor to perform fully or promptly any of his, her or their obligations, terms, conditions, stipulations or provisions of the Contract.

- (c) The Guarantor further agrees that all dividends, compositions and payments which the Government may at any time receive from the Contractor or from his, her or their estate or estates, whether in liquidation, bankruptcy or otherwise, in respect of such all losses, damages, costs, charges and expenses shall be taken and applied by the Government as payments in gross, and that this Guarantee shall stand good in respect of the balance to the full amount of
- (3) This Guarantee shall not be affected by any change of name or status in the company, firm or individual described as "the Contractor" or where "the Contractor" is a partnership, any change in the partners or in its constitution.
- (4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Government and the Contractor or by any alteration in the obligations imposed upon the Contractor by the Contract or by any waiver or forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, alteration, waiver or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.
- (5) Without prejudice to Clause 4 above, the obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by, and the Guarantor hereby waives notice of or assent to:
- (a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation to extension of time for performance);
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;
- (d) any forbearance, variation, extension, discharge, compromise, dealing with exchange, waiver or renewal in respect of any right of action or remedy that the Government may have, now or after the day of this Guarantee, against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;
- (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganization arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of

the Contractor;

- (f) any assignment, novation or sub-contracting by the Contractor of any or all of its obligations set out in the Contract;
 - (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations.
- (6) This Guarantee shall extend to any variation, novation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Government and the Contractor and for the avoidance of doubt, the Guarantor hereby authorizes the Government and the Contractor to make any such amendment, variation, novation or supplemental agreement without its notice or assent.
- (7) This Guarantee shall have immediate effect upon execution and is a continuing security. This Guarantee shall cover all of the obligations and liabilities of the Contractor under the Contract and shall remain in full force and effect and irrevocable until-
- (a) the date falling three months after the expiry of Contract; or
 - (b) the date on which all the obligations and liabilities of the Contractor under the Contract have been duly carried out, completed and discharged in accordance with the Contract, whichever is the later.
- (8) This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, indemnity, lien, pledge, bill, note, charge or any other security which the Government may at any time hold (collectively "Other Security") and this Guarantee may be enforced by the Government without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.
- (9) Any demand, notification or certificate given by the Government specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.
- (10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.
- (11) This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") and the Guarantor agrees to submit to the exclusive jurisdiction of the Courts of Hong Kong.
- (12) All documents arising out of or in connection with this Guarantee shall be served:
- (a) upon the Government, at the Agriculture, Fisheries and Conservation

Department of 5/F., Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon, Hong Kong, Director of Agriculture, Fisheries and Conservation marked for the attention of Supplies Officer, facsimile number (852) 2735 4516;

- (b) upon _____ the _____ Guarantor, _____ at _____, Hong Kong, marked for the attention of _____, facsimile number _____.
- (13) Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or fax addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile; and (c) if dispatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.
- (14) The aggregate amount of the Guarantor's liability under this Guarantee shall not exceed

IN WITNESS whereof the said Guarantor has caused its Common Seal to be hereunto affixed the day and year first above written.

* The [Common Seal/Seal] of the said)
 Guarantor was hereunto affixed)
 in the presence of)
)
 [Name(s)], [Title(s)])

@ Signed Sealed and Delivered)
 for and on behalf of and as)
 lawful attorney of the Guarantor)
 under power of attorney date)
 and deed of delegation)
 dated)
 by)
 [Name], [Title])
 and in the presence of)
)
 [Name], [Title])

* Please delete as appropriate

@ See Powers of Attorney Ordinance (Cap. 31)

Note : When bank guarantees are executed under power of attorney, a photocopy of the power of attorney, certified on each page by a Hong Kong solicitor that it is a true and complete copy of the origin must be submitted.

**Tender for the Provision of Service of
Monitoring Work on Fishing Activities to the
Agriculture, Fisheries and Conservation Department**

PART 5 – SCHEDULES

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Schedule 1 – Price Schedule

To: Director of Agriculture, Fisheries and Conservation

I/We,

having read the Terms of the Tender stated in these Tender Documents, hereby offer to provide the Service as required thereof at a total amount of _____ (HK\$).

Items	Number of Service * (a)	Service fee per time on patrolling the waters (HKD) (b)	Service fee per time on submitting monitoring report (HKD) (c)	Estimated fee of Service Contract (HKD) (a) x [(b) + (c)]
According to 'Service Requirements' in Part 6 of the Specifications of the Tender Documents, monitoring work on fishing activities at North East (NE) waters in Hong Kong (details as Appendix A to Specifications and labelled with number '1')	48			
According to 'Service Requirements' in Part 6 of the Specifications of the Tender Documents, monitoring work on fishing activities at South East (SE) waters in Hong Kong (details as Appendix A to Specifications and labelled with number '2')	48			
According to 'Service Requirements' in Part 6 of the Specifications of the Tender Documents, monitoring work on fishing activities at South (S) waters in Hong Kong (details as Appendix A to Specifications and labelled with number '3')	48			
According to 'Service Requirements' in Part 6 of the Specifications of the Tender Documents, monitoring work on fishing activities at West (W) waters in Hong Kong (details as Appendix A to Specifications and labelled with number '4')	26			
Total:				

*Number of Service is an estimated number in the price schedule for Tenderer reference, it is not an actual number of Service. Based on the actual condition, AFCD would determine the number of Service that was provided by the Contractor. Thus, total fee of the Contract would be changed depends on the actual number of Service. The Government reserves the right for not using the Service. The Government would also adjust the number of Service for different Hong Kong waters to fulfil the total contract sum.

Signature and Company chop : _____

Name of Company : _____

Name Authority : _____

Phone / Fax : _____ / _____

Date : _____

附表1—報價表

我／我們已閱讀招標文件所述的條款內容，特此提供所需服務的總費用為港幣_____元。

項目	服務次數* (a)	每次海上巡邏 服務費用 (港幣) (b)	每次提交觀察 報告服務費用 (港幣) (c)	估計服務 合約總值 (港幣) (a) x [(b) + (c)]
根據招標文件第6部分「規格」中的「服務要求」，於香港 <u>東北面水域</u> 進行漁業活動觀察 (有關範圍於附件A以號碼1標示)	48			
根據招標文件第6部分「規格」中的「服務要求」，於香港 <u>東南面水域</u> 進行漁業活動觀察 (有關範圍於附件A以號碼2標示)	48			
根據招標文件第6部分「規格」中的「服務要求」，於香港 <u>南面水域</u> 進行漁業活動觀察 (有關範圍於附件A以號碼3標示)	48			
根據招標文件第6部分「規格」中的「服務要求」，於香港 <u>西面水域</u> 進行漁業活動觀察 (有關範圍於附件A以號碼4標示)	26			
總計：				

* 報價表內所提供的服務次數只為估計數字，以供承辦商參考，並非實際服務次數。漁農自然護理署會視乎實際需要決定承辦商須提供的服務次數，因此合約總值將視乎實際服務次數而定。政府保留完全不使用任何服務的權利，也可因應情況調節各水域的漁業活動觀察次數，以達到合約總值。

公司蓋章及受權人簽署：_____

公司名稱：_____

受權人姓名：_____

聯絡電話 / 傳真號碼：_____ / _____

日期：_____

Schedule 2 – Payment Discounts and Contract Deposit Payment Method**2.1 Payment Discounts**

Tenderer is requested to indicate in the space provided below what discount it would allow on the tendered prices if payment for each consignment is made in full within:

- (a) Seven (7) clear working days from date of receipt of invoice or from the Acceptance Date, whichever is the later: _____% discount.
- (b) Fourteen (14) clear working days from date of receipt of invoice or from the Acceptance Date, whichever is the later: _____% discount.
- (c) Twenty-eight (28) clear working days from date of receipt of invoice or from the Acceptance Date, whichever is the later: _____% discount.

N.B.: (i) Please refer to Clause 14 of Part 3 – Terms of Tender before completing the above. Any prompt payment discount offered by Tenderer will NOT be taken into consideration in the tender price assessment.

- (ii) Tenderer is requested to insert the word 'NIL' in the space provided above if they do not offer any payment discount.

2.2 Contract Deposit

[Clause 20.2 of Part 3 – Terms of Tender and Clause 16 of Part 4 – Conditions of Contract]

I/We am/are prepared to pay the Contract Deposit by * Banker's Guarantee / Cash / Not applicable
(if the actual contract value is below HK\$1.4 million)

(*delete whichever are appropriate)

Name of Tenderer: _____

Authorized Signatory: _____
(Name, Title and Signature)

Telephone No.: _____ Fax No.: _____ Date: _____

Schedule 3 – Company/Business Organization Details**3.1. Company/Business Organization Status**

[Please refer to Clause 10 of Part 3 – Terms of Tender.]

A Tenderer should provide the following details:

- (a) Name and address of the company/business organization:

- (b) Length of business experience:

- (c) Shareholders/partners/proprietor of the company/business organization and their percentage of ownership:

- (d) Name and residential address of the following:

- (i) Managing director/partners:

- (ii) Other directors:

- (iii) Sole proprietor:

- (e) A copy of the Business Registration Certificate, Memorandum and Articles of Association, Certificate of Incorporation or other constitutional documents or documents evidencing its business status (Note: The name of company/business organization shown in the documents as required under this Clause shall be the same as the one stated in the Offer to be Bound).

- (f) A copy of relevant document showing the authorized person(s) who sign(s) the Part 7 - Offer to be Bound has/have the authority to sign for and on behalf of the Tenderer.

N.B.: Please use separate sheet if space is inadequate.

Name of Tenderer: _____

Authorized Signatory: _____
(Name, Title and Signature)

Telephone No.: _____ Fax No.: _____ Date: _____

3.2 Organization and team formation

[Please refer to Clause 10 of Part 3 – Terms of Tender.]

A Tenderer should provide the following information in respect of the organization structure of a Tenderer and the Licensees (if applicable) separately:

- (a) Detail description on the company's organization setup, especially the monitoring team:

- (b) Capacities and experience of monitoring personnel:

3.3 User Reference

[Please refer to Clause 11 of Part 3 – Terms of Tender.]

A Tenderer should provide a list of government users to whom similar services have been provided by the Tenderer (whether alone or in partnership with a Licensee):

- (a) Name of government user(s):

- (b) Name, address and telephone number for contact:

- (c) Scope of services:

- (d) Dates and duration of services provided:

- (e) Serviceability / availability figures for the last twelve months immediate before the Tender Closing Date:

N.B.: Please use separate sheet if space is inadequate.

Name of Tenderer: _____

Authorized Signatory: _____
(Name, Title and Signature)

Telephone No.: _____ Fax No.: _____ Date: _____

Schedule 4 – Statement of Compliance

[Please refer to Clause 27 of Part 3 – Terms of Tender.]

Confirmation of compliance with certain requirements in Part 6 Specifications

[Please refer to Clause 27 of Part 3 - Terms of Tender and Clauses 3 – 5 of Part 6 Specifications]

- ☐ I/We* confirm that I/we* shall comply with the requirements as stipulated in Clauses 3 - 5 of Part 6 Specifications. ^
- ☐ I/We* confirm that I/we* shall **not** comply with the requirements as stipulated in Clauses 3 – 5 of Part 6 Specifications in the following aspects: ^

Clause No.	Requirement	Details of Deviation
------------	-------------	----------------------

Notes:

- (i) *Please delete as appropriate.
- (ii) ^Please tick the box opposite if the compliance statement is confirmed in the affirmative.
- (iii) If a Tenderer does not complete the above, subject to any clarification which may be made by the Government, it shall be deemed that the Tenderer **will** comply with the relevant requirements in the Specifications.
- (iv) **A Tenderer's Tender will not be considered further if the Tenderer expressly indicates non-compliance with all or any requirements.** For this purpose, the completion of any one of the three columns under the non-compliance statement above in relation to such non-compliance shall be taken as such express indication. Any other indication which casts doubt on the true intention of the Tenderer may be further clarified.

Name of Tenderer: _____

Authorized Signatory: _____
(Name, Title and Signature)

Telephone No.: _____ Fax No.: _____ Date: _____

Schedule 5 – Non-collusive Tendering Certificate

To: the Government

Dear Sir/Madam,

Non-collusive Tendering Certificate

1. I/We, (name of the Tenderer) _____ of
(address(es) of the Tenderer(s)) _____

refer to the Government's invitation to tender for the Contract ("Invitation to Tender") and my/our Tender in response to the Invitation to Tender.

Non-collusion

2. I/We represent and warrant that in relation to the Invitation to Tender:
- (a) My/Our Tender was prepared genuinely, independently and made with the intention to accept the Contract if awarded;
 - (b) My/Our Tender was not prepared with any agreement, arrangement, communication, understanding, promise or undertaking with any person (including any other Tenderer or competitor) regarding:
 - i) prices;
 - ii) methods, factors or formulas used to calculate prices;
 - iii) an intention or decision to submit, or not submit, any Tender;
 - iv) an intention or decision to withdraw any Tender;
 - v) the submission of any Tender that does not conform with the requirements of the Invitation to Tender;
 - vi) the quality, quantity, specifications or delivery particulars of the products or services to which the Invitation to Tender relates; and
 - vii) the terms of my/our Tender,

and I/we undertake that I/we will not, whether before or after the award of the Contract, enter into or engage in any of the foregoing.

3. Paragraph 2(b) of this certificate shall not apply to agreements, arrangements, communications, understandings, promises or undertakings with:
- (a) the Government;
 - (b) a joint venture partner with which I/we have submitted my/our Tender, and such joint venture arrangement has already been notified to the Government in my/our Tender;
 - (c) my/our consultants or sub-contractors, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy arrangement or sub-contract;
 - (d) my/our professional advisers, provided that the communications are held in strict confidence and limited to the information required for the adviser to render their professional advice in relation to my/our Tender;
 - (e) insurers or brokers for the purpose of obtaining an insurance quote, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular insurance arrangement;
 - (f) banks for the purpose of obtaining financing for the Contract, provided that the communications are held in strict confidence and limited to the information required to facilitate that financing; and
 - (g) any person other than the Government, provided that the Government has given prior written consent.

Disclosure of subcontracting

4. Without prejudice to other requirements set out in the Tender Documents concerning sub-contracting arrangement, in particular, the requirement to seek the Government's prior written approval before sub-contracting, I/We understand that I/we are required to disclose all proposed sub-contracting arrangements for the Contract to the Government in my/our Tender, including those which will be entered into after the Contract is awarded. I/We warrant that I/we have duly disclosed and will continue to disclose such arrangements to the Government.

Consequences of breach or non-compliance

5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in Paragraph 9.1 of the Terms of Tender, the Government may exercise any of the rights under Paragraphs 9.2 to 9.4 of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against me/us.

6. Under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong), bid-rigging is serious anti-competitive conduct. I/We understand that the Government may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the “Commission”) and provide the Commission with any relevant information, including but not limited to information on my/our Tender and my/our personal information.

Signed by the Tenderer / Signed by an
authorised signatory for and on behalf of :
the Tenderer

Name of the authorised signatory (where :
applicable)

Title of the authorised signatory (where :
applicable)

Date :

Appendix to Schedules

Marking scheme and Assessment Criteria of monitoring work on fishing activities

1. The Tenderer shall submit a Technical Proposal together with the completed Tender Documents. The Technical Proposal shall normally be limited to 30 pages in length, excluding drawings and appendices. It shall be inexpensively bound and shall be of A4 size. The Technical Proposal shall normally be divided into Sections corresponding to the Assessment Criteria set out in the table below.
2. The Government in assessing the Tender will use this Marking Scheme. Tenders fail to meet the requirements of Technical Proposal in Stage 1 will NOT be considered. Those meeting the requirements of Technical Proposal will be assessed according to the Marking Scheme in Stage 2.
3. The Technical Scores (non-revenue criteria) in Stage 2 would carry a weight of 60% as against a weight of 40% for Price Score (revenue criteria) in Stage 3. **Tenders failing to obtain the passing mark of 50 for whole Technical Proposal will NOT be considered further in Stage 3.** Tender with the highest overall combined score in Stage 4 will normally be recommended for acceptance.

Stage 1 – Requirements of Technical Proposal

For the process of tender assessment, please refer to paragraph 14 of Part 3 – Terms of Tender.

The Tenderer must submit Technical Proposal (with information containing those listed below), and other essential documents as stipulated in Clause 5.8 of Part 3 – Terms of Tender, with these Tender Documents.

In the Technical Proposal, the Tenderer shall provide information listed below:

1. Background and objectives of the Service;
2. Background of the target waters;
3. Experience of fishing activities and monitoring works;
4. Suggested patrol routes (with photos);
5. Suggested information/intelligence collection methods; and
6. Any other innovative ideas or devices.

*Tenderer who has submitted Tender Documents which fail to meet the Essential Requirements as stipulated in Clause 4 of Part 3 – Terms of Tender will be disqualified and will NOT be considered further in the evaluation process.

Stage 2 – Technical Assessment of Proposal (60% of Overall Assessment)

- a) Service requirements for the Provision of Service of Monitoring Work on Fishing Activities are stipulated in Part 6 – Specifications.
- b) Criteria for the technical assessment are listed in the following table. Full marks of technical assessment is 100. Tenders failing to obtain the passing mark of 50 for the whole Technical Proposal will NOT be considered further in Stage 3.

	Assessment Criteria	Maximum Marks Scored	Marks Scored	Remarks
Performance of the proposal (100 marks)				
1	Background and objectives of service	10		1
2	Description of the background of the target waters	10		2
3	Experience on fishing and monitoring works	15		3
4	Suggested patrol routes	20		4
5	Methods of information/intelligence collection	25		5
6	Innovative ideas or devices (*note)	20		6
	Total score	100		

*Note: **If contractor suggests more than one patrol service at the same time, it is considered as an innovative idea to enhance the effectiveness of the service.**

Remark 1: 10 - Proposal includes information such as identification of fishing methods or fishing vessels with detailed explanation on each item and provides more than 5 good suggestions which will enhance the Service.

5 - Proposal is practical and includes basic information such as identification of fishing methods or fishing vessels with brief explanation. Also, it provides 3 to 5 good suggestions to achieve the objectives of the Service.

0 - Proposal is practical and includes brief information such as identification of fishing methods or fishing vessels without any suggestions to achieve the objectives of the Service.

Remark 2: 10 - Description of the background of the target waters such as any specific features is practical with detailed explanation that shows the Tenderer knows that particular waters very well; with 5 or more precaution items on that particular waters.

5 - Description of the background of the target waters such as any specific features is practical with brief explanation that shows the Tenderer knows that particular waters; with 3 to 5 precaution items on that particular waters.

0 - Description of the background of the target waters such as any specific features is practical with brief information without any precaution items on that particular waters.

Remark 3: 15 - more than 15 aggregate years of relevant experience in fishing and monitoring works.

10 - 10 - 15 aggregate years of relevant experience in fishing and monitoring works.

0 - less than 10 aggregate years of relevant experience in fishing and monitoring works.

Remark 4: 20 - The suggested routes cover main black spots of illegal fishing suggested by the tenderer with detailed explanation and figures. Also, the proposal provides more than 5 backup patrol routes for sudden situation.

10 - The suggested routes cover most black spots of illegal fishing suggested by the tenderer with brief explanation and figures. Also, the proposal provides 3 to 5 backup patrol routes for sudden situation.

0 - The suggested routes do not cover the black spots of illegal fishing suggested by the tenderer and do not provide any backup plans for sudden situation.

Remark 5: 25 - Detailed description of information/intelligence collection method with detailed explanation and figures; with more than 5 feasible methods.

10 - Brief description of information/intelligence collection method with brief explanation and figures; with 3 to 5 feasible methods.

0 - Brief description of information/intelligence collection method and the method is not suitable for the Service, i.e., without any feasible method.

Remark 6: 20 - The proposal contains more than 5 practical innovative suggestions that contribute to benefits/positive values.

10 - The proposal contains 3 to 5 practical innovative suggestions that contribute to benefits/positive values.

0 - The proposed contains no practical innovative suggestions.

All contents of the accepted proposal would form part of the Contract, including all the innovative suggestions and devices.

The Technical Proposals of Qualified Tenderers will be scored and weighted in following approach:

$$\text{Weighted Technical Score} = 60 \times \frac{\text{Mark achieved for qualified technical proposal being assessed}}{\text{Highest technical mark among all qualified proposals}}$$

*Calculated score would be rounded up to 2 significant digits.

Stage 3 – Price Assessment (40% of Overall Assessment)

The calculation of Weighted Price Score is:

$$\text{Weighted Price Score} = 40 \times \frac{\text{Lowest price of the Tender which has passed the technical assessment}}{\text{Price of the Tender}}$$

*Calculated score would be rounded up to 2 significant digits.

Stage 4 – Calculation of Total Score

Total Score = Weight Technical Score + Weighted Price Score

The Tender achieving the highest Total Score will normally be recommended for award of the Contract.

漁業活動觀察的評分制度及評審準則

1. 投標者須提交計劃書及填妥的投標文件。計劃書須予以訂裝，並以A4紙印製，內容不可多於30頁，圖片及附件除外。計劃書內容須按下表的評審準則分為不同部分。
2. 本署將按評分制度評審標書。若標書未能符合第一階段所列出的計劃書的要求，將不獲考慮；若標書符合列明的計劃書的要求，將會接受第二階段評審。
3. 技術得分(第二階段)及價格得分(第三階段)將會按60:40的比例計算，只有技術得分獲得50分或以上的及格分數，才會進入第三階段評審。在第四階段中，總分最高的標書，將獲推薦採納。

第一階段 – 計劃書的要求

投標者須參閱第3部分「投標條款」第14項有關標書評審的規定。

投標者所提交的計劃書須包括以下內容，詳情可參閱第3部分「投標條款」第5.8項：

投標者須於計劃書中提供下列資料：

1. 服務的背景及目標；
2. 服務水域的背景；
3. 漁業活動觀察及記錄人員的捕魚作業及監察經驗；
4. 建議的巡邏路線(附圖片)；
5. 搜集資料／情報的方法；及
6. 任何創新建議／設備。

*如投標者未能符合第3部分「投標條款」第4項中訂明的基本要求，將被視作不符合資格及不會獲進一步考慮。

第二階段 – 技術評審 (佔綜合評分60%)

- a) 漁業活動觀察服務的要求，已於第6部分「規格」中列明；
- b) 本署將按下列的評審準則，為該計劃書進行技術評審。滿分為100分，及格分數為50分，若分數低於50分，該計劃書將不獲考慮。

	評審準則	最高評分	所得分數	備註
(四)	計劃書表現 (100分)			
1	服務的背景及目標	10		1
2	服務水域背景的描述	10		2
3	捕魚作業及監察經驗	15		3
4	建議的巡邏路線	20		4
5	搜集資料／情報的方法	25		5
6	創新建議／設備(*註)	20		6
	總分	100		

註：如承辦商建議在同一時間提供多於一次巡邏服務，會被視為有助提升服務效益的創新建議。

備註1：10 - 內容切合實際而詳盡，就識別捕魚方法或辨認漁船等每個項目提供詳細資料及解釋，並提出5個以上可取的建議以達提升服務的目標。

5 - 內容切合實際但未夠詳盡，就識別捕魚方法或辨認漁船等項目提供基本要點及解釋，並提出3至5個可取的建議以達到服務的目標。

0 - 內容切合實際但欠詳盡，就識別捕魚方法或辨認漁船等項目提供簡單要點，亦未能提出任何建議以達到服務的目標。

備註2：10 - 內容切合實際而詳盡，就目標水域的特徵等背景提供詳細解釋，表現出對該水域非常熟悉，並提出5個以上有關該水域一帶要注意的事項。

5 - 內容切合實際但未夠詳盡，就目標水域的特徵等背景提供大概要點，對該水域有一定程度的認識，並提出3至5個有關水域一帶要注意的事項。

0 - 內容切合實際但欠詳盡，就目標水域的特徵等背景提供簡單要點，對該水域的熟悉程度不夠，亦未能提出任何有關水域一帶要注意的事項。

備註3：15 - 具備十五年以上的捕魚作業及監察經驗。

5 - 具備十至十五年的捕魚作業及監察經驗。

0 - 具備十年以下的捕魚作業及監察經驗。

備註4：20 - 巡邏路線覆蓋由投標者提供的主要的非法捕魚黑點，內容詳盡，載有詳細解釋及數據，並提出5個以上在突發情況下可採用的後備巡邏路線計劃。

10 - 巡邏路線覆蓋由投標者提供的大部分的非法捕魚黑點，內容未夠詳盡，載有簡單解釋及數據，並提出3至5個在突發情況下可採用的後備巡邏路線計劃。

- 0 - 巡邏路線未能覆蓋由投標者提供的非法捕魚黑點，亦未能提出在突發情況下可採用的後備巡邏路線計劃。

備註5： 25 - 有關搜集資料／情報的方法內容詳盡，載有詳細解釋及數據，並提出5個以上可行的方法。

- 10 - 搜集資料／情報的方法內容未夠詳盡，載有簡單解釋及數據，並提出3至5個可行的方法。

- 0 - 搜集資料／情報的方法內容欠詳盡，方法並不合適，未能提出任何可行的方法。

備註6： 20 - 能提供5種以上可帶來裨益或正面價值的創新建議／設備。

- 10 - 能提供3至5種可帶來裨益或正面價值的創新建議／設備。

- 0 - 未能提供任何創新建議／設備。

所有獲接納的計劃書(包括所有創新建議／設備)將成為合約的一部分。

總分達到50分或以上的計劃書，將會以下列算式，並按比重計算出於技術評審中最終得分：

$$60 \times \frac{\text{技術評審所得分數}}{\text{所有計劃書中的最高分數(技術評審)}}$$

*計算後分數將調整至2位有效數字

第三階段 – 價格評審 (佔綜合評分40%)

通過第二階段技術評審的計劃書，將會以下列算式，並按比重計算價格方面的得分：

$$40 \times \frac{\text{所有價書中的最低投標價}}{\text{該標書的投標價}}$$

*計算後分數將調整至2位有效數字

第四階段 – 計算總分

總得分會以下列方法計算：

總得分 = 按比重計算的技術得分 + 按比重計算的價格得分

最高總分的標書，將會被推薦為是次服務合約的供應商。

**Tender for the Provision of the Service of
Monitoring Works on Fishing Activities to the
Agriculture, Fisheries and Conservation Department**

PART 6 – SPECIFICATIONS

Contents

1. Background and Objectives
2. Regions of Service
3. Service Requirements
4. Service Contents
5. Monitoring Report for Fishing Activities

Appendix A – Distribution of four Hong Kong waters for monitoring work on fishing activities

Appendix B – Sample of monitoring report for fishing activities

SPECIFICATIONS

1. Background and Objectives

The Fisheries Protection Ordinance (Cap.171) was amended in 2012, in which a registration system for fishing vessels had been introduced and trawling was banned in Hong Kong waters for protecting our precious marine resources and ecosystem. However, illegal fishing cases still occurred in Hong Kong waters. We require experienced fishermen for helping AFCD to combat illegal fishing. As local fishermen possess good knowledge of the different fishing methods, and they can recognize the types of fishing vessels and realize whether it is legal or illegal fishing, this Service aims to improve the efficiency and effectiveness of combating illegal fishing through the cooperation with local fishermen.

2. Regions of Service

Waters of monitoring:

- i. From North of Cheung Tsui, Sai Kung to North-eastern waters of Hong Kong boundary (details in Appendix A and labelled with number '1');
- ii. From South of Cheung Tsui, Sai Kung to South-eastern waters of Hong Kong boundary (details in Appendix A and labelled with number '2');
- iii. From Tai O to South waters of Hong Kong boundary (details in Appendix A and labelled with number '3'); and
- iv. From Tai O to West waters of Hong Kong boundary (details in Appendix A and labelled with number '4').

3. Service Requirements

- 3.1 The Contractor shall be a local fisherman or a company formed by fisherman/fishermen with a recommendation letter from any local Fisheries Co-corporative Society or Fishermen Association. The tenderer would be disqualified if he/she is not a local fisherman nor owning a registered fishing vessel.
- 3.2 The Contractor shall conduct routine patrols and collect related information/intelligence and assisting enforcement operation of AFCD:
 - a. Routine Patrol and Intelligence Collection
 - i. The Contractor shall comply with the instructions of AFCD for planning the patrol route and collecting information/intelligence.
 - ii. If the Contractor found non-local fishing vessels either fishing or not fishing, they shall inform police and AFCD for further action.
 - iii. If the Contractor found non-local fishing vessels and confirmed that the non-local fishing vessels left their fishing gears in the sea, the Contractor shall inform AFCD and remove these fishing gears in accordance with AFCD's instruction.

b. Providing support during enforcement operation of AFCD

When AFCD conducts any enforcement operation, the Contractor shall assist AFCD to collect illegal fishing intelligence in accordance with AFCD's instructions before and during the operation so that the commander of the enforcement operation can make/fine tune the respective arrangement and action with reference to the intelligence collected.

3.3 For each illegal fishing case, including those mentioned in 3.2 (a)(ii) or (b) above, that was discovered by the Contractor, the Contractor shall provide a statement with signature as requested by AFCD. The Contractor shall be a witness in court if necessary.

3.4 The Contractor shall provide the information below for qualification assessment:

- a. The Contractor shall provide a list of one to two Local Registered Fishing Vessels for each water of monitoring. AFCD would evaluate the suitability of the fishing vessels; and
- b. For each vessel, the Contractor shall provide a name list of their crew members, at least 3 crew members with related experience in fishing and monitoring activities.

4. Service Contents

4.1 The Contract shall last for twelve (12) months and commence from 1 January 2021 or the date of the Letter of Conditional Acceptance, whichever is the later. During fishing moratorium (tentatively from 1 May to 15 August 2021), AFCD has the right to step down the Service within the Contract Period.

4.2 Service would not be more than 20 times per month within the Contract Period, working hour would not be more than 9 hours each time, totalling 170 times of Service for twelve (12) months.

4.3 To prove the Contractor is actively relayed in Hong Kong fisheries, the Contractor shall submit a recommendation letter from one of the Fisheries Co-operative Society or Fishermen Association in Hong Kong in support of this service.

4.4 Local Registered Fishing Vessels provided by the Contractor shall meet legal requirements on specification and the qualification of vessel operators. Related requirements are detailed below:

- a. Vessels shall be a registered fishing vessel in Hong Kong;
- b. The owner of registered fishing vessel shall possess the Certificate of Registration of Local Fishing Vessel;
- c. The length of fishing vessel shall not be less than 12 meters#;
- d. Cruising speed shall greater than 10 knots;
- e. The fishing vessel shall operate under strong breeze or Sea State of 6 or below condition;
- f. The registered fishing vessel shall be installed with AIS system;

- g. Except the coxswain and engineer, there shall be a person who is required for monitoring and recording the fishing activities encountered. The person shall have fishing experience and familiar with the fishing methods and gears;
- h. The person shall have the knowledge to obtain the information of the illegal fishing vessel such as the location, information of that vessel, MMSI, speed and its length;
- i. The Contractor shall provide a valid Operating Licence (OL) issued by MD and insurance certificate of their vessels; and
- j. Vessel operator shall have valid vessel operation license and other related licenses during the Contract Period.

This may not be applicable to Deep Bay. The Contractor can make adjustment according to the real situation.

4.5 Service requirements shall include but not limited to the following items:

- a. The Contractor shall arrange a Local Registered Fishing Vessel, vessel operator and other crew members when the Contractor receives the instruction from AFCD (would inform the Contractor at least 24 hours before the required Service). All vessels and crew members must be mentioned in the list required in Clause 3.4(a) and (b) hereinabove. Vessel license number, name list and phone number of all crew members shall be provided to AFCD before the patrol. The Contractor shall record the information of all fishing vessels including those illegal ones for every patrol and reach the destination within the requested time.
- b. If the Contractor discovered any suspected case of illegal fishing, record sheet, i.e., Monitoring Report, shall be filled in and be submitted to AFCD (template of the Monitoring Report is shown in Appendix B).
- c. The Contractor shall provide the MMSI number of his fishing vessel before each patrol and shall switch on the AIS of his vessel during the patrol period. In addition, the Contractor shall submit the patrol route record or other record format as specified by AFCD after each patrol;
- d. For all information, records and photos, i.e., the Monitoring Report referred to in paragraph 5 below, the Contractor shall submit it to AFCD within 7 days after the patrol;
- e. The ownership for all information and records belongs to AFCD;
- f. To recognize the fishing vessels, the Contractor shall make reference to the database of registered fishing vessel:
https://www.afcd.gov.hk/tc_chi/fisheries/fish_cap/fish_cap_fpo/fish_comp_mes.html
- g. the Contractor shall not disclose to any third party any confidential information such as the date of Service, time and others related information; and
- h. If necessary, AFCD would assign 2 to 4 staffs on board to inspect the performance of the Contractor for monitoring work on fishing activities.

- 4.6 The Contractor shall comply with all relevant Laws of Hong Kong, including but not limited to Cap.57 Employment Ordinance, Cap.115 Immigration Ordinance, Cap.282 Employees' Compensation Ordinance, Cap.485 Mandatory Provident Fund Schemes Ordinance, Cap.509 Occupational Safety and Health Ordinance and Cap.548 Merchant Shipping (Local Vessels) Ordinance etc.
- 4.7 The Contractor shall prepare suitable and enough safety equipment, including but not limited to life jacket and lifebuoy.
- 4.8 Payment of Contract shall include all fuel cost required, maintenance work and cleansing. AFCD would not make any extra payment of the Service due to the increase of fuel cost or other reasons.
- 4.9 Due to the extreme weather that is not suitable for vessel voyage, the Contractor shall inform and get approval from AFCD for cancelling the planned patrol Service. That cancelled patrol Service would be determined as an unfinished Service. Service fee would not be paid by AFCD.
- 4.10 The Contractor shall provide suitable equipment and gear to ensure the safety of all crew members during Service. Patrol vessels of AFCD would not accompany the monitoring activities.

5. Monitoring Report for Fishing Activities (refer to Appendix B)

5.1 Objectives

Aims to collect information/intelligence of fishing vessels and help AFCD to combat illegal fishing of both local and mainland fishing vessels by engaging local fishermen to improve the efficiency of the monitoring works.

5.2 Content of monitoring report

- a. Date and time of patrol:
- i. Registration number of fishing vessel;
 - ii. MMSI number of fishing vessel;
 - iii. Staff of monitoring and recording;
 - iv. Number of suspected fishing vessel(s);
 - v. General weather condition;
 - vi. Visibility;
 - vii. Level of wind force and sea state;
 - viii. Patrol route of AIS and other designated record methods; and
 - ix. Photos.
- b. Information of suspected fishing vessels:
- i. Date and time;
 - ii. Discovery location (GPS);
 - iii. Registration number (Hong Kong);
 - iv. Registration number (Mainland);
 - v. Fishing activities;
 - vi. Characteristic of the fishing vessel;
 - vii. GPS location or AIS or MMSI number of target fishing vessel;

- viii. General weather condition, level of wind force and sea state; and
- ix. Photos.

5.3 Submission

- a. Payment would only be made when the Contractor can fulfil all requirements of the Service during the Contract Period, such as submit Monitoring Report by the requested date and finished all tasks by complying with instructions from AFCD.
- b. The Contractor shall revise the Monitoring Report or submit supplement documents within the specified period as requested by AFCD.

服務合約規格

1. 背景及目標

《漁業保護條例》(第171章) 於2012年修訂後引入本地漁船登記制度及禁止在香港水域拖網捕魚，以保護珍貴的海洋資源及生態系統。然而，非法捕魚的情況仍在香港水域發生。本地漁民熟悉不同的捕魚方法及操作，能夠辨認各種漁船及區分合法與非法的捕魚方式，加上他們捕魚經驗豐富，可協助漁農自然護理署(本署)監察非法捕魚活動。因此，本署希望通過與漁民團體合作，以更有效打擊非法捕魚活動。

2. 服務範圍

服務水域：

- i. 由長咀以北至香港東北面邊界水域一帶(有關範圍於附件A以號碼1標示)；
- ii. 由長咀以南至香港東南面邊界水域一帶(有關範圍於附件A以號碼2標示)；
- iii. 由大澳至香港南面邊界水域一帶(有關範圍於附件A以號碼3標示)；及
- iv. 由大澳至香港西面邊界水域一帶(有關範圍於附件A以號碼4標示)。

3. 服務要求

- 3.1 承辦商必須為本地漁民或由本地漁民組成的公司，並須提交由一個本地漁業合作社或漁會所發出的推薦信，如非本地漁民或沒有擁有本地漁船，將被視為不符合資格。
- 3.2 承辦商必須為本署提供日常巡邏及搜集資料／情報的服務，以及協助本署進行執法行動：
 - a) 日常巡邏及搜集情報：
 - (i) 承辦商必須根據本署指示，計劃巡邏路線及搜集資料／情報。
 - (ii) 如遇上非本地漁船，不論有關船隻是否正在捕魚，應立即通知水警和本署，以便作出拘捕行動。
 - (iii) 如遇上非本地漁船並確認非本地漁民的漁具設置於海中，承辦商應立即通知本署，並按本署指示移除及處理該些漁具。
 - b) 於本署進行執法行動時提供支援：

本署在執行打擊非法捕魚的行動時，承辦商必須按本署指示事先及進行期間搜集非法捕魚的情報，以便行動指揮官能根據有關情報作出相應的部署和行動。
- 3.3 如承辦商發現非法捕魚案件，包括上文第 3.2(a)ii 及(b)項提及的情況，必須向本署提供證人口供，並須在證人口供上簽名作實。在有需要時，承辦商須就相關案件於法庭作供。

3.4 承辦商必須提供以下資料，以便本署評核其資格：

- a) 承辦商須就每個進行漁業活動觀察的水域，提供一至兩艘漁船的名單，以供本署檢查其是否符合資格提供服務；及
- b) 承辦商必須就每艘漁船提交最少三名船員的姓名，並列明有關船員在捕魚和監察方面的經驗，以便本署審核其資格。

4 服務內容

4.1 服務日期由 2021 年 1 月 1 日或條件接納信中所指定的日期開始(以較後的日期為準)，服務為期(12)個月。在休漁期間(暫定為 2021 年 5 月 1 日至 8 月 15 日)，本署可以暫停要求承辦商提供服務。

4.2 在合約期間，預計服務次數每月不多於 20 次，每次服務時間不多於 9 小時，一年共 170 次。

4.3 承辦商必須提交由一個本地漁業合作社或漁會所發出的推薦信，以證明其與本港漁業有密切聯繫。

4.4 承辦商所提供的本地已登記漁船，必須符合有關船隻規格及船隻操控人員資格等法律規定。有關要求如下：

- (a) 船隻必須為香港登記的合法船隻；
- (b) 船主必須擁有由本署發出的有效《本地漁船登記證明書》；
- (c) 船隻長度不少於12米#；
- (d) 船隻巡航速度不少於10 節；
- (e) 船隻須適航於風力六級或以下的海面風速情況；
- (f) 船隻必須裝置船舶自動識別系統(AIS)；
- (g) 除船長及工程人員外，船上須有一位專職負責進行漁業活動觀察及記錄的人員，該人員必須具備捕魚作業經驗，並熟悉香港水域的捕魚方法和漁具；
- (h) 船上須有人員懂得如何取得有關非法捕魚船隻的位置及讀取其資料，例如業務識別碼(MMSI)、航速及長度等；
- (i) 承辦商須提供由香港海事處發出的有效運作牌照及保險證書；及
- (j) 船隻操控人員於服務期間須擁有有效的駕駛及操控船隻的相關牌照。

#這要求可能不適用於后海灣水域，投標者可以因應其實際情況而作出改變。

4.5 服務要求包括但不限於下列項目：

- (a) 接到本署的指示後(通知時限不少於二十四小時)，承辦商必須安排一艘已登記的本地漁船、船隻操控人員及其他船員。船隻及船員必須是在上文第3.4(a)及(b)項所要求提交的名單之內。承辦商須在巡邏前通知本署有關船隻的牌照號碼，以及操控人員及其他船員的姓名及聯絡號碼等資料；在每次巡邏時，承辦商亦須於指定時間到達指定地點，並須記錄所有漁船的資料，包括有關非法捕魚活動的資料；
- (b) 如在巡邏時遇到懷疑進行非法捕魚的船隻，承辦商必須分別記錄每宗事件，並將資料提交本署(有關海上漁業活動觀察報告的範本可參閱附件B)；

- (c) 在每次巡邏前，承辦商須於向本署提供船隻的MMSI碼，並須於巡邏期間全時段開啟船上的AIS。此外，在每次巡邏後，承辦商須將其巡航路線記錄或其他由本署指定的記錄方式提交本署；
- (d) 承辦商搜集的所有資料、記錄和相片，即下文第5項提及的海上漁業活動觀察報告，均須於巡邏完畢後的7天內向本署提交；
- (e) 承辦商搜集的所有資料及記錄，均屬本署所有；
- (f) 承辦商須參考載於本署網頁的已登記本地漁船資料庫，以識別作業漁船是否已經登記：
(https://www.afcd.gov.hk/tc_chi/fisheries/fish_cap/fish_cap_fpo/fish_comp_mes.html)；
- (g) 承辦商絕不能向第三方透露服務日期、時間及其他相關資料；及
- (h) 有需要時，本署會派2至4名職員到船上監察承辦商進行漁業活動觀察的表現。

- 4.6 承辦商提供有關服務時，必須遵守所有相關的香港法例，包括但不限於香港法例第 57 章《僱傭條例》、香港法例第 115 章《入境條例》、香港法例第 282 章《僱員補償條例》、香港法例第 485 章《強制性公積金計劃條例》、香港法例第 509 章《職業安全及健康條例》及香港法例第 548 章《商船(本地船隻)條例》等。
- 4.7 承辦商的船隻應配備適當和足夠數量的安全及救生設備，包括但不限於救生衣和救生圈。
- 4.8 合約包括巡航所需消耗的燃油費和船隻進行巡邏工作所需的維修、保養和清潔費用。本署將不會接受承辦商因燃油價上漲或其他因素要求追加的費用。
- 4.9 如因天氣惡劣不宜航行，承辦商須通知並徵求本署批准取消預定的巡航服務。如經本署職員確認取消安排，該次巡航將被視為未能完成，本署將不會承擔任何費用。
- 4.10 承辦商在服務期間，必須提供適當設施或裝備以確保所有人員的安全。本署的巡邏船可能不會在旁監察。

5 海上漁業活動觀察報告（請參閱附件B）

5.1 目的

通過與漁民團體合作搜集有關漁船資料／情報，以協助本署打擊本港及內地漁船進行非法捕魚活動，從而提升監察本港水域捕魚情況的效益。

5.2 漁業活動觀察報告內容：

- (a) 巡航日期、時間
 - (i) 巡航船隻牌照號碼；
 - (ii) 巡航船隻 MMSI 碼；
 - (iii) 觀察及記錄人員；
 - (iv) 發現懷疑進行非法捕魚活動的船隻數目；
 - (v) 整體天氣情況；
 - (vi) 能見度；

- (vii) 整體風向、風力及海面情況；
- (viii) AIS 的巡航路線圖／或其他指定的記錄方式；及
- (ix) 相關相片。

(b) 懷疑進行非法捕魚活動的船隻資料

- (i) 發現日期及時間；
- (ii) 發現地點(GPS 位置)；
- (iii) 香港牌照號碼；
- (iv) 內地牌照號碼；
- (v) 作業方式；
- (vi) 船隻特徵；
- (vii) 目標漁船的 GPS 位置及／或 AIS 資料(MMSI 碼)(如有)；
- (viii) 發現時的整體天氣情況、風向、風力及海面情況；及
- (ix) 相關相片。

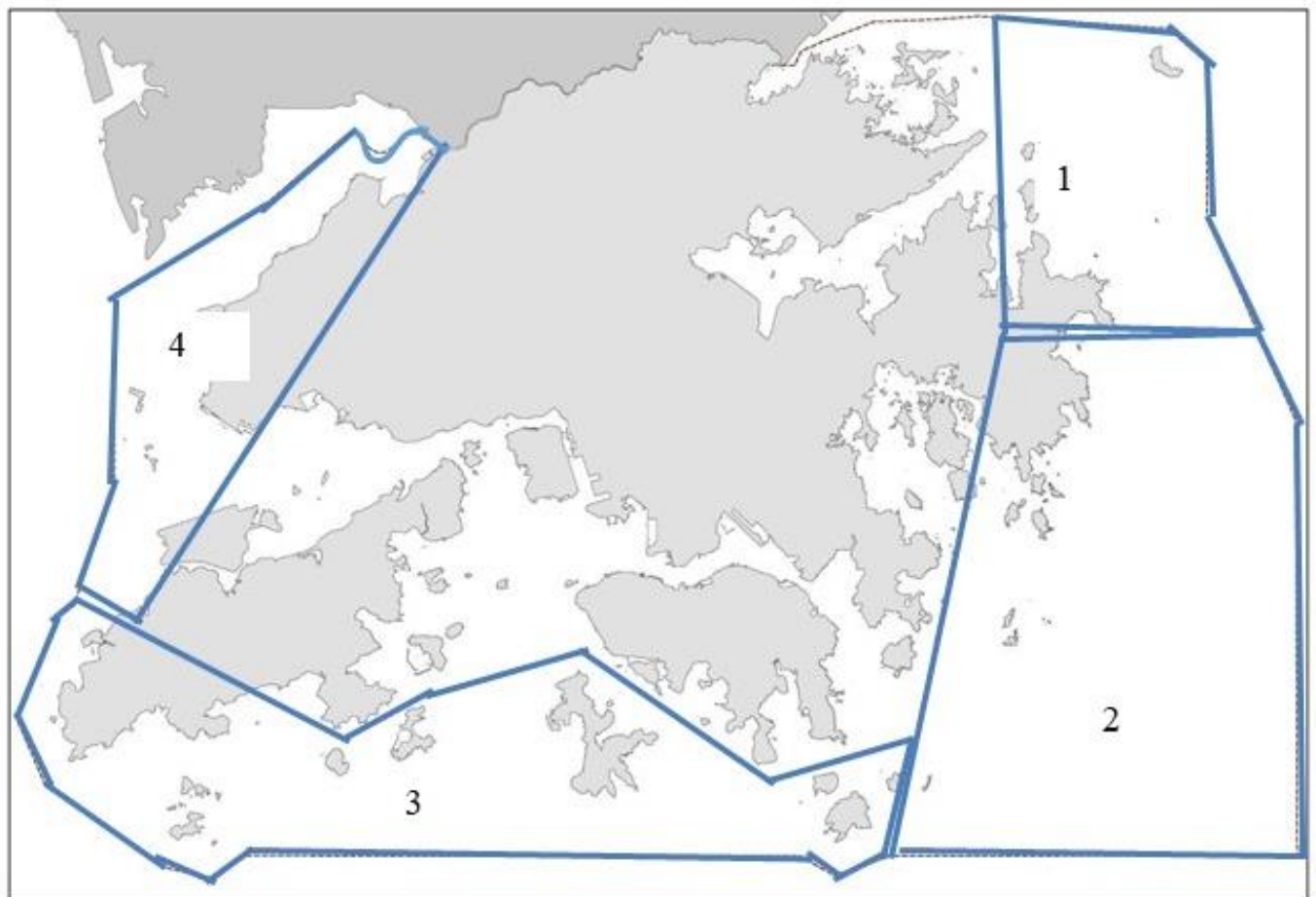
5.3 驗收準則

- (a) 承辦商須在服務期內符合服務內容所指定的所有要求，例如按時提交觀察報告以及按本署指示完成所有任務，本署才會繳付服務費。
- (b) 如有需要，承辦商須按本署要求在指定時間內修改觀察報告或提供補充文件。

Appendix A to Specifications

Distribution of four Hong Kong waters for monitoring work on fishing activities

Waters	Details of Waters	Contract period
North East Waters (NE)	From North of Cheung Tsui, Sai Kung to North-eastern waters of Hong Kong boundary (details as this Appendix and labelled with number '1')	12 months
South East Waters (SE)	From South of Cheung Tsui, Sai Kung to South-eastern waters of Hong Kong boundary (details as this Appendix and labelled with number '2')	12 months
South Waters (S)	From Tai O to South waters of Hong Kong boundary (details as this Appendix and labelled with number '3')	12 months
West Waters (W)	From Tai O to West waters of Hong Kong boundary (details as this Appendix and labelled with number '4')	12 months



Appendix B to Specifications

[範本]

Sample of monitoring report for fishing activities**漁業活動觀察報告****Patrol Information 巡航資料**

Date 日期: _____ Time 時間: _____

Registration number of the patrol vessel 巡航船隻牌照號碼: _____

MMSI number of patrol vessel 巡航船隻MMSI碼: _____

Name of observer 觀察及記錄人員: _____

Number of suspected illegal fishing vessel

發現懷疑進行非法捕魚活動的船隻數目: _____

General weather 整體天氣: _____

Visibility 能見度: _____

Level of wind force and sea state 整體風向、風力及海面情況: _____

Patrol route of AIS and other designated record methods

AIS的巡航路線圖/或其他指定的記錄方式: _____

Company chop 公司蓋章: _____

Report date 編寫報告日期: _____

Information of suspected illegal fishing vessel(s)

懷疑進行非法捕魚活動的船隻資料

Serial number 序號： _____

Date and Time 發現日期及時間	
Location (GPS) 發現地點 (GPS位置)	
Registration number (HK) 香港牌照號碼	
Registration number (Mainland) 內地牌照號碼	
Fishing method 作業方式	
Characteristics of fishing vessel 船隻特徵	
GPS location or AIS or MMSI number of target fishing vessel 目標漁船的GPS位置及/ 或AIS資料(MMSI碼)(如 有)	
General weather condition, level of wind force and sea state 發現時的天氣、能見 度、風向、風力及海面 情況	

Additional information 補充資料 (如有):

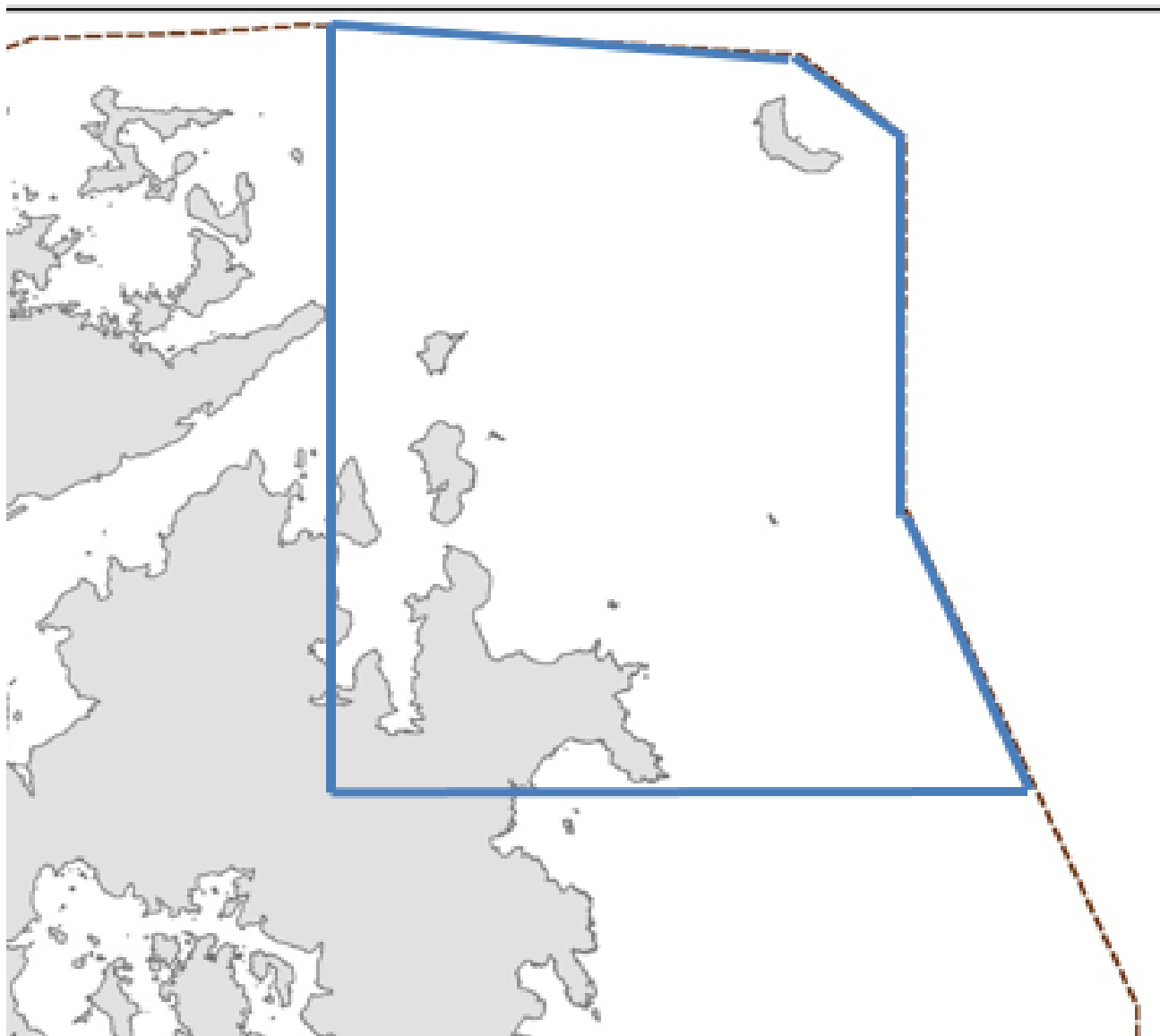
Information of suspected illegal fishing vessel(s)

懷疑進行非法捕魚活動的船隻資料

Photos 相片

Registration number (HK) 香港牌照號碼： _____

Location of suspected illegal fishing vessel; 代表懷疑進行非法捕魚漁船的位置：



**Tender for the Provision of Service of
Monitoring Work on Fishing Activities to the
Agriculture, Fisheries and Conservation Department**

PART 7 – OFFER TO BE BOUND

1. Having read the Tender Documents, I/we, the Tenderer mentioned below, agree to be bound by all of the terms and conditions as stipulated therein.

2. I/We, the Tenderer mentioned below, do hereby agree to carry out all and any of the Services at the Unit Price(s) quoted by me/us in the Price Schedule free of all other charges, subject to and in accordance with the terms and conditions of the Tender Documents.

Signed by the Tenderer / Signed by an authorised
signatory for and on behalf of the Tenderer:

Name of the Tenderer:

Name and title of the authorised signatory:
(where applicable)

Date:

**Tender for the Provision of Service of
Monitoring Work on Fishing Activities to the
Agriculture, Fisheries and Conservation Department**

PART 8 – MEMORANDUM OF ACCEPTANCE

On behalf of the Government of the Hong Kong Special Administrative Region,

I _____

(name and position of officer)

accept your Tender for the Contract relating to the following Item(s). A copy of each document constituting the Contract is hereby attached for identification purposes.

Dated this _____ day of _____ 20

Signed by the said _____ in the presence of : _____
